

# Strategies for Protecting IP In China WHAT BUSINESSES NEED TO KNOW Enforcing Intellectual Property Rights in the U.S



### DHS – Dual Enforcement Mechanisms

- CBP Civil, Administrative Enforcement
  - Pursuant to Border Search Authority
  - Results in Seizure, Forfeiture and Destruction of Infringing Goods
  - Civil Fines may be Imposed in Trademark Cases
  - May Result in Criminal Investigation
- HSI Criminal Investigation
  - Border Search, Plain View (Markets/Storefronts), Search Warrants
  - Results in Seizure, Forfeiture and Destruction of Infringing Goods AND POTENTIALLY, Criminal Prosecution
  - Runs Concurrently with Civil, Administrative Action



### Violations Recognized by CBP

- Counterfeit Trademark
- "Confusingly Similar" Trademark
- "Piratical" Copy
- (Restricted Gray Market Importation)

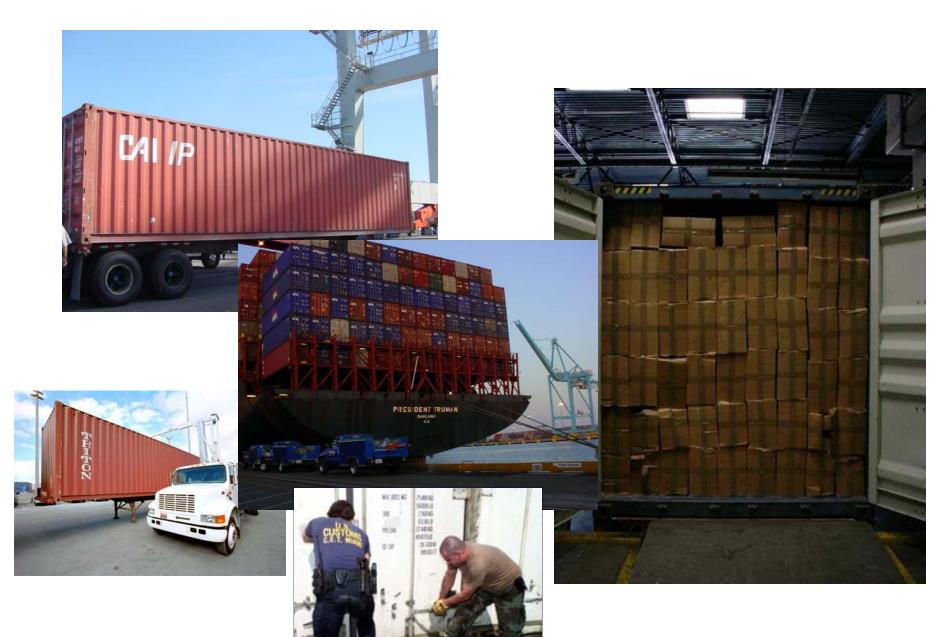
### Criminal Laws Enforced by HSI

- Trafficking in Counterfeit Goods and Services
- Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging
- Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances
- Unauthorized recording of Motion pictures in a Motion picture exhibition facility
- Asset Forfeiture

## Features of CBP's Border Enforcement Program

- 1. Ex Officio authority to search, examine, detain, seize and forfeit merchandise violating IP;
- 2. Centralized database of "recorded" trademarks, copyrights, and product id guides;
- 3. Targeting and risk assessment tools;
- 4. Communication, cooperation, assistance by and disclosure to, the private sector (industry);
- 5. Ongoing training of CBP personnel (by CBP AND the Trade);
- 6. Collaboration with and outreach to the public







### **Disclaimer**

The information contained on this page does not constitute an official publication of the United States. The statistics, and the projections based upon any statistics contained herein, are not intended to be used for economic analysis, and are provided for the purpose of establishing CBP priorities and workload.

### **CBP IPR IT Innovations**

- eAllegations
- ATS
- ITTN
  - Bulletins
  - PSAs
- IPRS/IPRiS
- Product ID Guides/Manuals
- Seizure Tracking Database



### eAllegations

https://eallegations.cbp.gov/Home/Index2





DHS.gov

#### e-ALLEGATIONS

You are entering an Official United States Government System, which may be used only for authorized purposes. The Government may monitor and audit usage of this system, and all persons are hereby notified that use of this system constitutes consent to such monitoring and auditing. Unauthorized attempts to upload information and/or change information on this Web site are strictly prohibited and are subject to prosecution under the Computer Fraud and Abuse Act of 1986 and Title 18 U.S.C. Sec.1001 and 1030.

Thank you for visiting the U.S. Customs and Border Protection e-Allegations portal. Here you can report on suspected violations of U.S. Customs Law and related illicit trade activities. In filing your allegations, please be as specific, detailed, and concise as possible to help expedite your complaint.

#### REPORT SUSPECTED CRIMINAL/ILLEGAL ACTIVITY

This button is to be used for reporting criminal and illegal activities for referral to Homeland Security Investigations

- · Immigration crime, human rights violations and human trafficking or smuggling
- · Smuggling of weapons, narcotics, or other contraband
- · Financial crimes, money laundering, bulk cash smuggling
- Cybercrime, website fraud
- · International art and antiquity theft
- En Español

REPORT SUSPECTED CRIMINAL/ILLEGAL ACTIVITY

#### REPORT TRADE VIOLATIONS

This button is to be used only to report illegal trade activity.

- · Intellectual Property Rights infringement
- Textile or Free Trade Agreement violations
- · Health and Safety issues
- · Classification and Value violations
- · Forced Labor Violations

REPORT TRADE VIOLATIONS

e-Allegations Frequently Asked Questions

Intellectual Property Rights information

#### REPORT EVASION VIOLATIONS VIA THE ENFORCE AND PROTECT ACT

This category is for reporting allegations as to evasion of an antidumping or countervailing duty (AD/CVD) order. NON-EAPA allegations may be reported in the Report Trade Violations button above. Please review the EAPA allegation requirements and instructions. Enforce and Protect Act Allegation Instructions. Small business requests for assistance should be mailed to: eapallegations@cbp.dhs.gov

- . Meet the definition of an interested party as defined by statute
- · Provide a statutory description of covered merchandise and applicable AD/CVD order
- . Demonstrate that evasion of an AD/CVD order has occurred

#### REPORT EVASION VIOLATIONS VIA THE ENFORCE AND PROTECT ACT

PAPERWORK REDUCTION ACT STATEMENT: AN AGENCY MAY NOT CONDUCT OR SPONSOR AN INFORMATION COLLECTION AND A PERSON IS NOT REQUIRED TO RESPOND TO THIS INFORMATION UNLESS IT DISPLAYS A CURRENT VALID OMB CONTROL NUMBER. THE CONTROL NUMBER FOR THIS COLLECTION IS 1651-0131, EXPIRATION 09/30/2020. THE ESTIMATE YOU CAN WRITE TO U.S. CUSTOMS AND BORDER PROTECTION, 90 K STREET, NR., 1081-10121, WASHINGTON D.C. 20229.

Accessibility Privacy Statement DHS.gov

Step 1 - Tell us about yourself										
First Name:										
Middle Name:										
Last Name:										
Phone Number:										
Contact E-Mail:										
Who are you?	Other 🗸									
Step 2 - Tell us about the allegation										
Is this an Immediate Threat to Loss of Life or Damage to Property?  No   If you selected "yes" contact 1-800-BE-ALERT (1-800-232-5378) immediately.										
Violation Type:	* Classification of Merchandise < Required									
Violation Description:	* < Required									
Violator Product:	* < Required									
Country Of Export:	Select Country									
Product Category	00 Select HTSUS									
Step 3 - Tell us about the alleged violator										
Violator Name:	* < Required									
Violator Address 1										
Violator Address 2										
Violator City										
Violator State:	Select State									
Province or U.S. Possession:										
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Who are you?	Other								
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Violation Description:									
Violator Product:									
Country Of Export:									
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Violator Address 2									
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Province or U.S. Possession:									
Violator Zip Code									
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Additional Parties:									
*Enter text below									
BotDetect CAPTCHA ASP.NET Form Validation									
Attachment option: If you would like to attach a document file to this allegation, select File Upload.									

### Recordation

- Tells CBP WHAT is protected
  - Word, design, product shape, etc
  - (Classes of) goods protected
- Product ID Guides may be linked to database
- Incumbent on right owners to keep current
- Some of the information provided to CBP through this process is protected by the Trade Secrets Act (18 U.S.C. 1905)



### Why Recordation is Encouraged

- Provides information to CBP
- Facilitates communication with right holder



## Recordation of Trademarks and Copyrights with CBP

- Subsequent to registration with the USPTO or U.S. Copyright Office, rights may be recorded with CBP
- Application for recordation is made with CBP in order protect against infringing imports
- Requirements for recordation are set out in regulations (19 CFR Part 133)
- CBP's Statutory/Regulatory Scheme currently require recordation as a prerequisite to detention (Suspension of Release)



### Trademarks

## EXAMPLE OF A U.S. TRADEMARK REGISTRATION





#### United States Patent and Trademark Office

Home Site Index Search FAQ Glossary Guides Contacts eBusiness eBiz alerts News Help

### Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Oct 16 04:01:40 EDT 2009

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG BOTTOM HELP

Please logout when you are done to release system resources allocated for you.

### Record 1 out of 1

TARR Status ASSIGN Status

TDR

TTAB Status

( Use the "Back" button of the

Internet Browser to return to TESS)



Word Mark NIKE

Goods and Services IC 018. US 003. G & S: all-purpose sports bags, waist packs, backpacks, fannypacks and

duffle bags. FIRST USE: 19720317. FIRST USE IN COMMERCE: 19720317

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 24.17.25 - Biohazard symbol; Degree sign (°); Equal sign (=); Greater than symbol >

(mathematical); Handicapped symbol; Hazardous materials symbol; Less than symbol <

(mathematical); Pound sign (#)

26.17.12 - Angles (geometric); Chevrons

Serial Number 74291743

Filing Date July 7, 1992

Current Filing Basis 1A Original Filing Basis 1A

Published for Opposition March 2, 1993

Registration Number 1772987 Registration Date May 25, 1993 Int. Cl.: 18

Prior U.S. Cl.: 3

### United States Patent and Trademark Office Registered May 25, 1993

### TRADEMARK PRINCIPAL REGISTER



NIKE, INC. (OREGON CORPORATION) ONE BOWERMAN DRIVE BEAVERTON, OR 97005

FOR: ALL-PURPOSE SPORTS BAGS, WAIST PACKS, BACKPACKS, FANNYPACKS AND DUFFLE BAGS, IN CLASS 18 (U.S. CL. 3).

FIRST USE 3-17-1972; IN COMMERCE 3-17-1972.

OWNER OF U.S. REG. NOS. 1,237,469, 1,325,938 AND OTHERS.

SER. NO. 74-291,743, FILED 7-7-1992.

TERESA M. RUPP, EXAMINING ATTORNEY

### Copyrights

### EXAMPLE OF A U.S. COPYRIGHT REGISTRATION



### Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

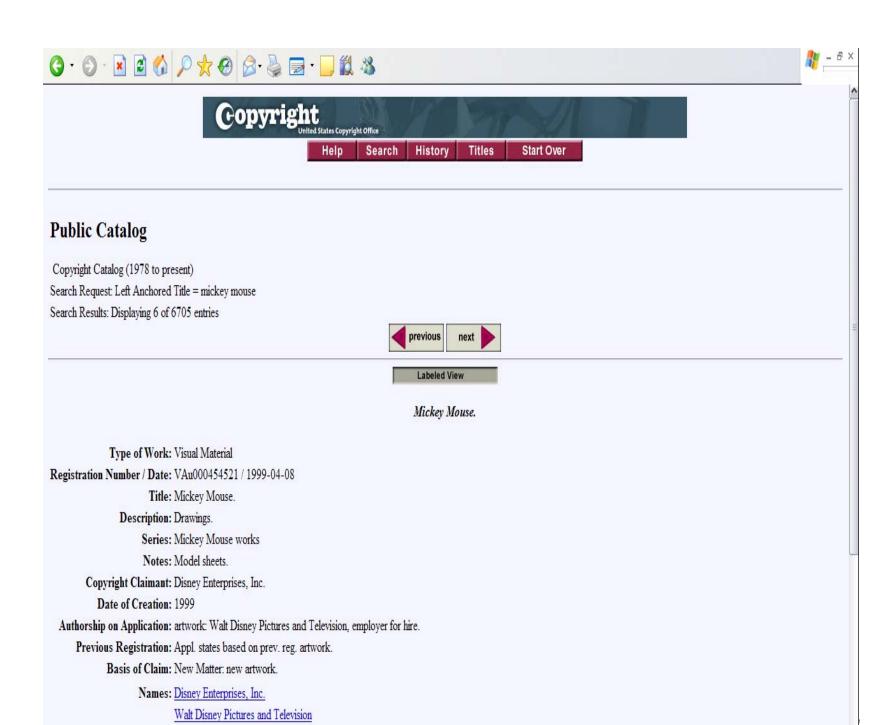
For a Nondramello Literary Work UNITED STATES COPYRIGHT OFFICE TXu1-

FORM TX

Register of Copyrights, United States of America

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Internet



### E-Recordation via "IPRR"



https://iprr.cbp.gov/



prr.cbp.gov

IPRR INTELLECTUAL PROPERTY RIGHTS e-RECORDATION

OMB 1651-0123 Expiration: 09/30/2019

#### Welcome to the Intellectual Property Rights e-Recordation (IPRR) application.



The filling of this electronic application will begin the administrative recordation process with CBP. A separate application is required for each recordation sought. Applications will be processed in the order in which they are received. The recordation fee for copyrights is \$190. The recordation fee for trademarks is \$190 per International Class of goods.

We recommend that you have the following materials and information readily available before you begin the application process:

- . U.S. Patent & Trademark Office Registration Number or the U.S. Copyright Office Registration Number
- Digital images of the protected mark/work in ".jpg," ".gif" or ".pdf" format that accurately depict the right to be protected. Individual image files are limited to 2MB.
- . Evidence of a pending application for registration at the U.S. Copyright Office, if recording an unregistered copyright with CBP.
- Familiarization with the applicable regulations: Trademarks: 19 CFR 133.1 et seq. Copyrights: 19 CFR 133.31 et seq.

#### FORM OF PAYMENT

The recordation fee may be made either by credit card or check. Please be advised that applications paid for by check could be delayed up to six weeks. All incoming mail is processed through CBP's mailroom at the Ronald Reagan Building, which includes irradiation and sorting. It is then transferred to the Office of Trade, Regulations & Rulings, where it is sorted again for final delivery to the IPR Branch. We apologize in advance for any delay this may cause in providing enforcement. On the other hand, applications paid for on-line with a credit card are generally processed within three (3) business days.

#### RENEWALS OF EXISTING TRADEMARK AND COPYRIGHT RECORDATIONS

A separate recordation application is required for each recordation renewal sought. Applications will be processed in the order in which they are received. The renewal fee for an unexpired copyright recordation is \$80 and \$190 for an expired copyright. For unexpired trademark recordations, the renewal fee is \$80 per previously recorded International Class (IC) of goods and \$190 for any additional IC's added to a renewal not previously recorded. For expired trademark recordations, the fee is \$190 per International Class of goods.

#### TEMPORARY RECORDATION OF UNREGISTERED COPYRIGHTS

Temporary recordation of unregistered Copyrights is now available while your application for registration is pending at the U.S. Copyright Office (USCO). Upon request (email to <u>iprrquestions@cbp.dhs.qov</u>), you will receive instructions for submitting an application for recordation of your copyright with CBP for border enforcement purposes. Proof of application to register your Copyright at the USCO is required.

Time Zone: Please note that all online applications are processed in our system on the Eastern Standard Time (EST) zone.

Once your recordation application has been approved, you may view your CBP recordation using the Intellectual Property Rights Search (IPRS) database at: IPRS

Requests for assistance with the recordation application process should be directed to the Intellectual Property Rights Branch via email iprrquestions@cbp.dhs.gov or call (202)325-0216.

Instructions The system will time-out after 30 minutes of inactivity. Proceeding through the application resets the 30-minute timer on each page. Please complete the application before exiting the system, as incomplete applications will not be processed. If your application times out, please contact <a href="IPRROUESTIONS@cbp.gov">IPRROUESTIONS@cbp.gov</a> to delete the incomplete application before you can continue on. Please refrain from entering information just to "test" the system. Click <a href="IRADEMARK Renewal">IRADEMARK Renewal</a> or <a href="COPYRIGHT COPYRIGHT Renewal">COPYRIGHT Renewal</a> if you would like to view the application before you begin. Be sure to "screen print" each page as you move through the application process, and retain for your records.

Instructions/FAO's

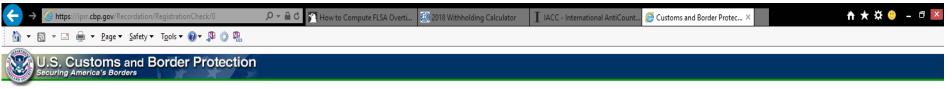
NEW RECORDATION

RENEWAL

CHANGE OF OWNERSHIP

CHECK STATUS

**REQUEST 3 MONTHS EXTENSION** 



IPRR INTELLECTUAL PROPERTY RIGHTS e-RECORDATION

OMB 1651-0123 Expiration: 09/30/2019

#### **New Recordation**

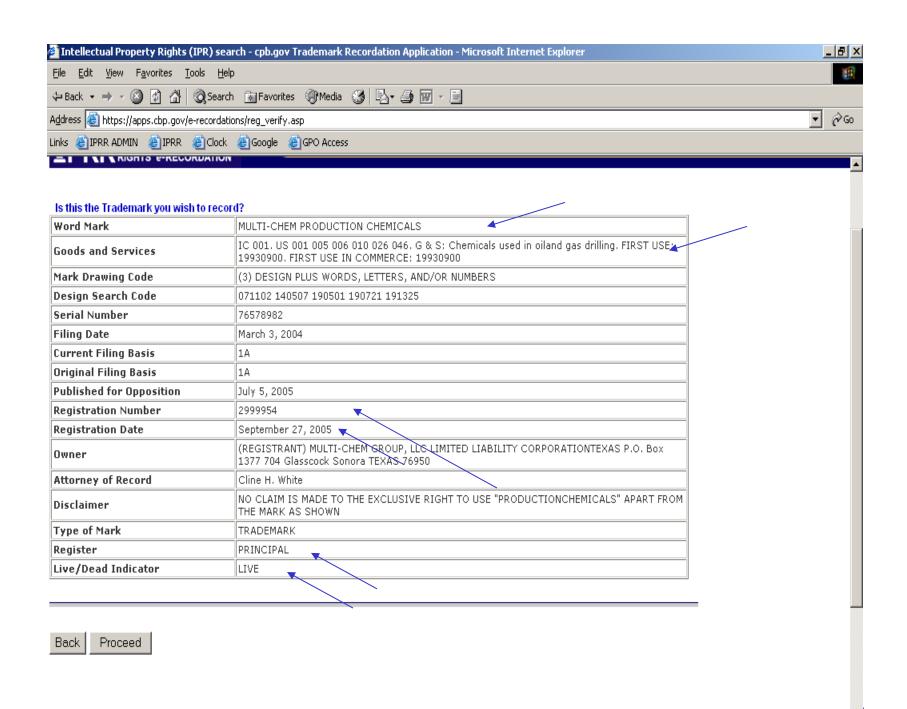
Is this application for Copyright or Trademark Copyright \*

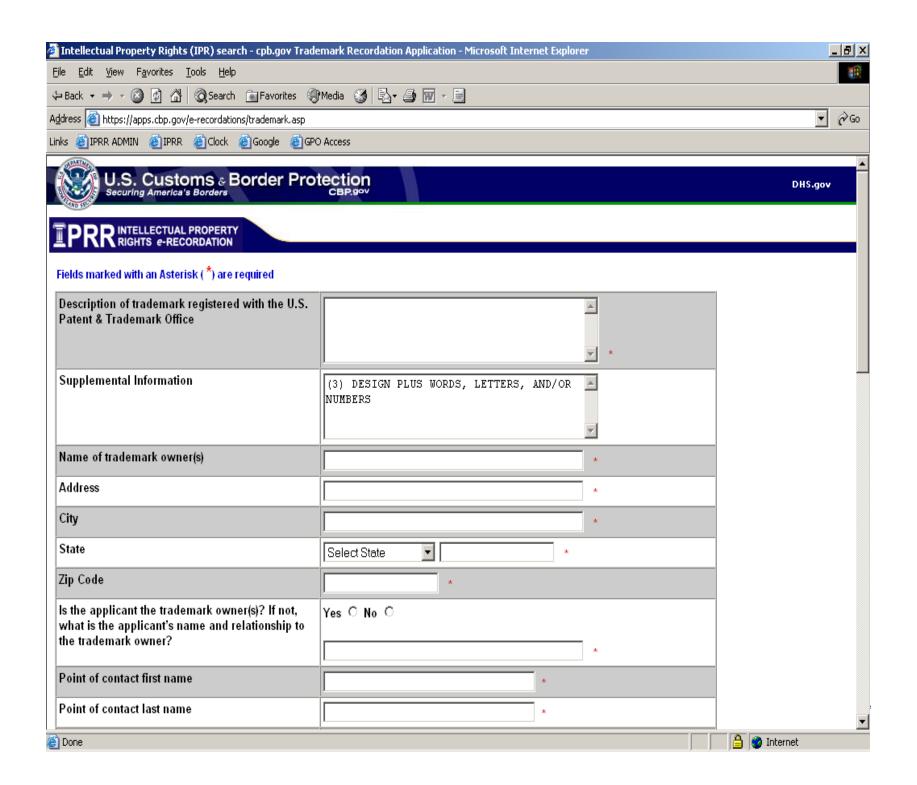
Registration Number

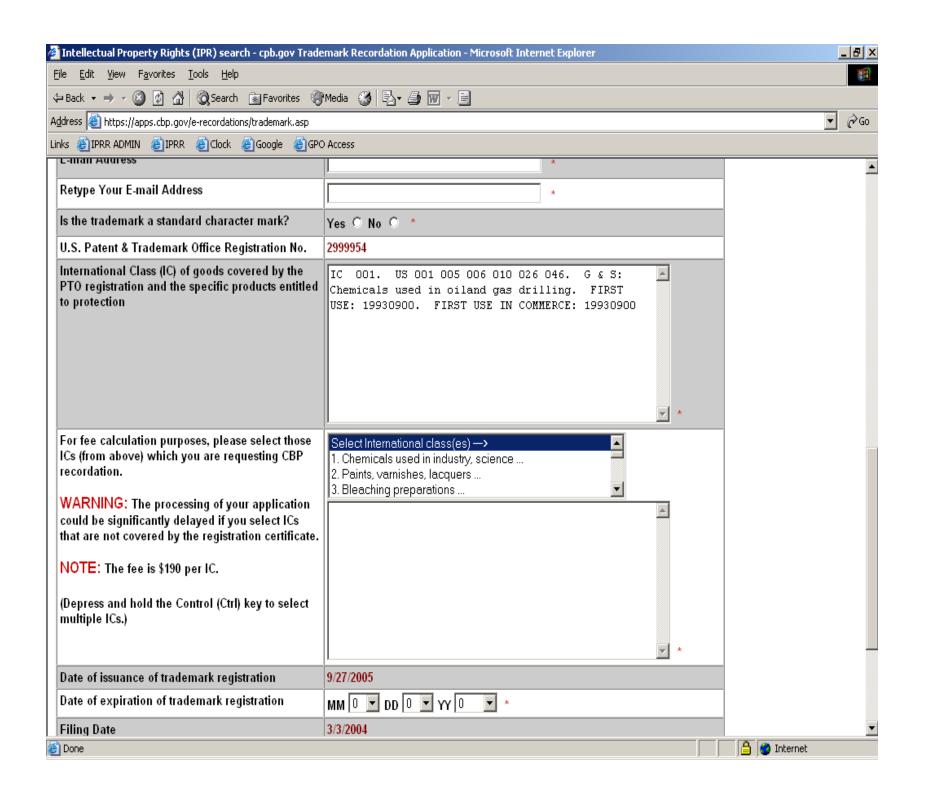
Note: Please avoid navigating the site using your browser's Back Button - this may lead to incomplete data being transmitted and pages being loaded incorrectly. Please use the links provided within the page whenever possible.

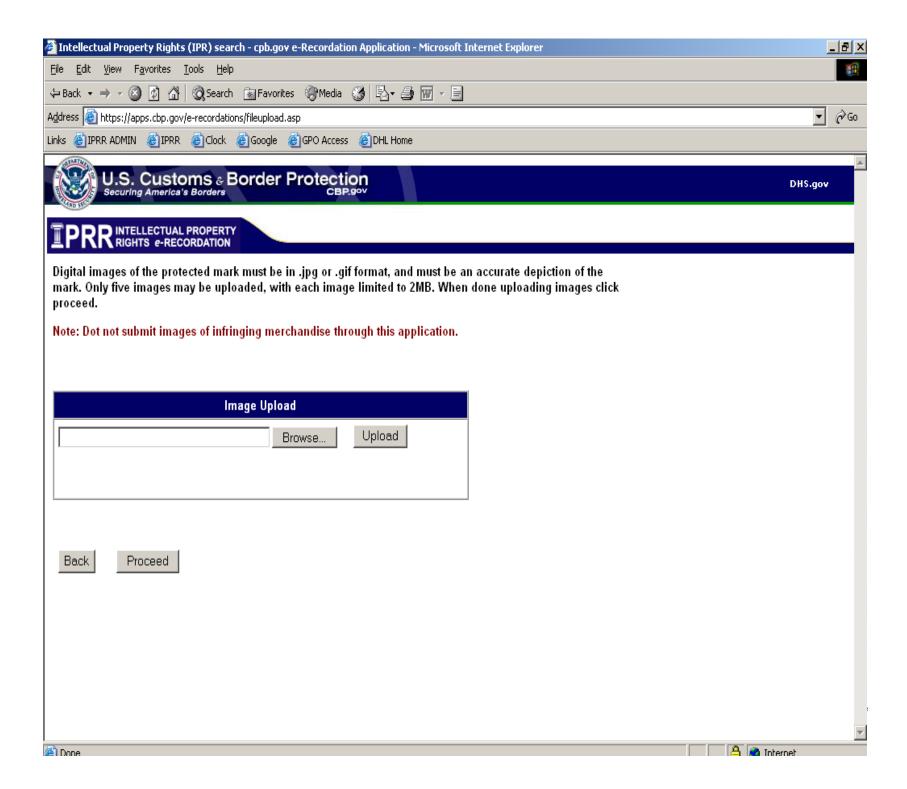
PROCEED

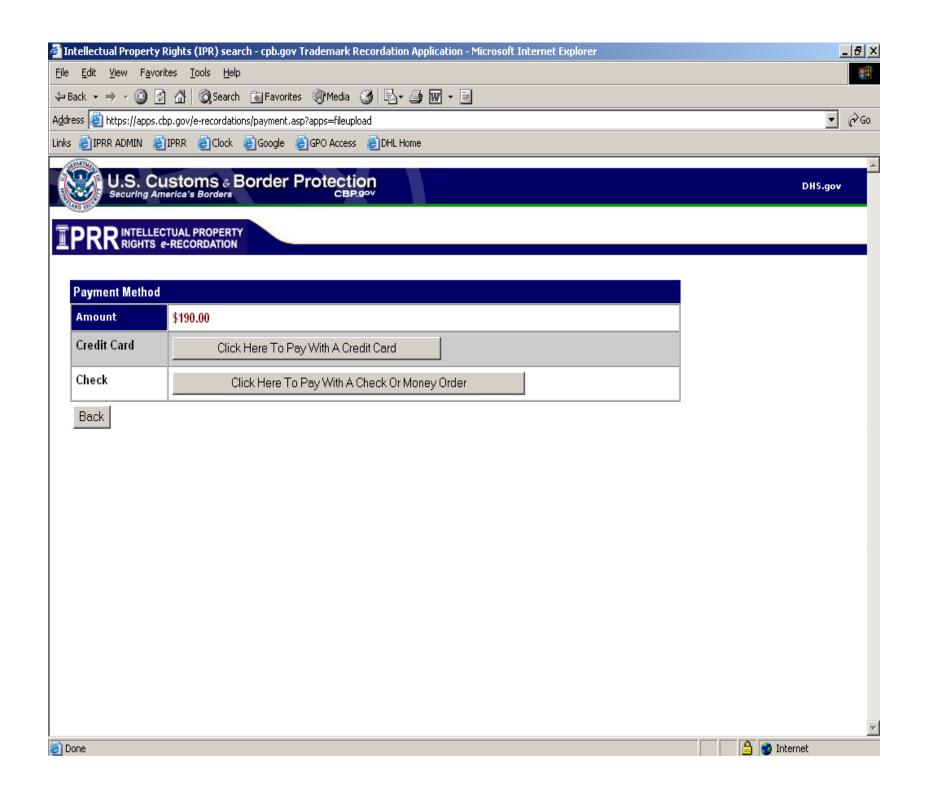
Accessibility Privacy Statement DHS.gov







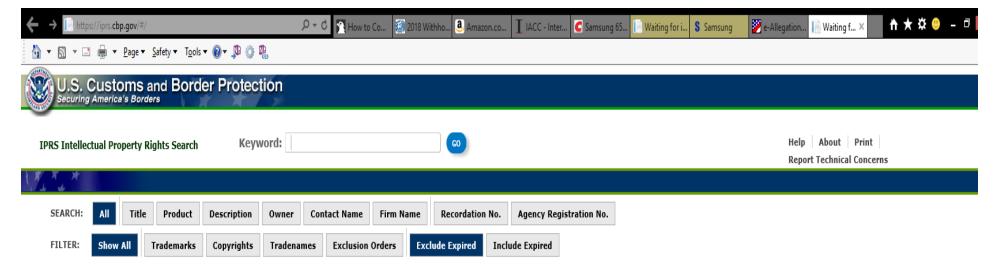




### **IPRS**

https://iprs.cbp.gov/#/





### What's New

The total number of searchable IPR recordations in this database is 38929

#### Recordations

In order to record a new recordation or to renew your existing recordation, please navigate to e-Recordations. CBP's IPR e-Recordation program is administered by the Intellectual Property Rights Branch within the Regulations and Ruling Directorate, Office of Trade. For assistance please email: iprrquestions@cbp.dhs.gov, or call (202) 325-0216.

### About the Intellectual Property Rights Search (IPRS)

IPRS is a searchable database containing public versions of U.S. Customs and Border Protection intellectual property rights recordations. Recordations can be retrieved based on simple or complex search characteristics using keywords and Boolean operators. IPRS has the added functionality of restricting searches to specific fields and record types. IPRS contains expired as well as current records and by default excludes expired records. For more information about features or how to use IPRS, please visit the HELP section.

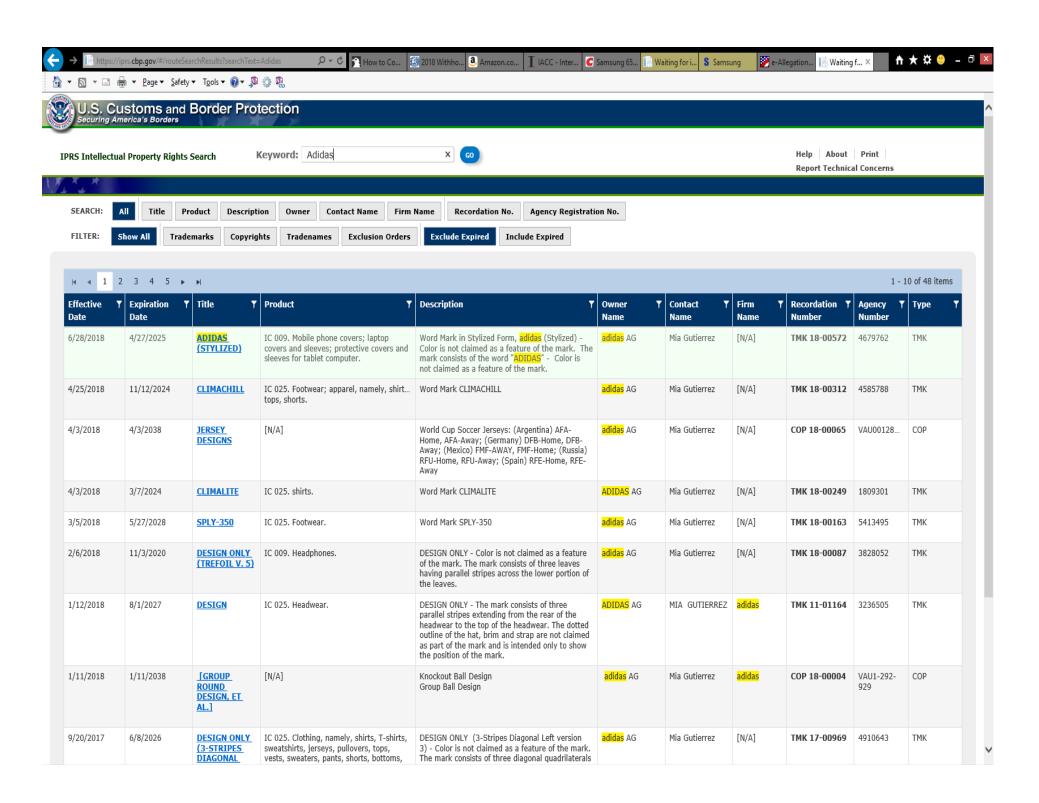
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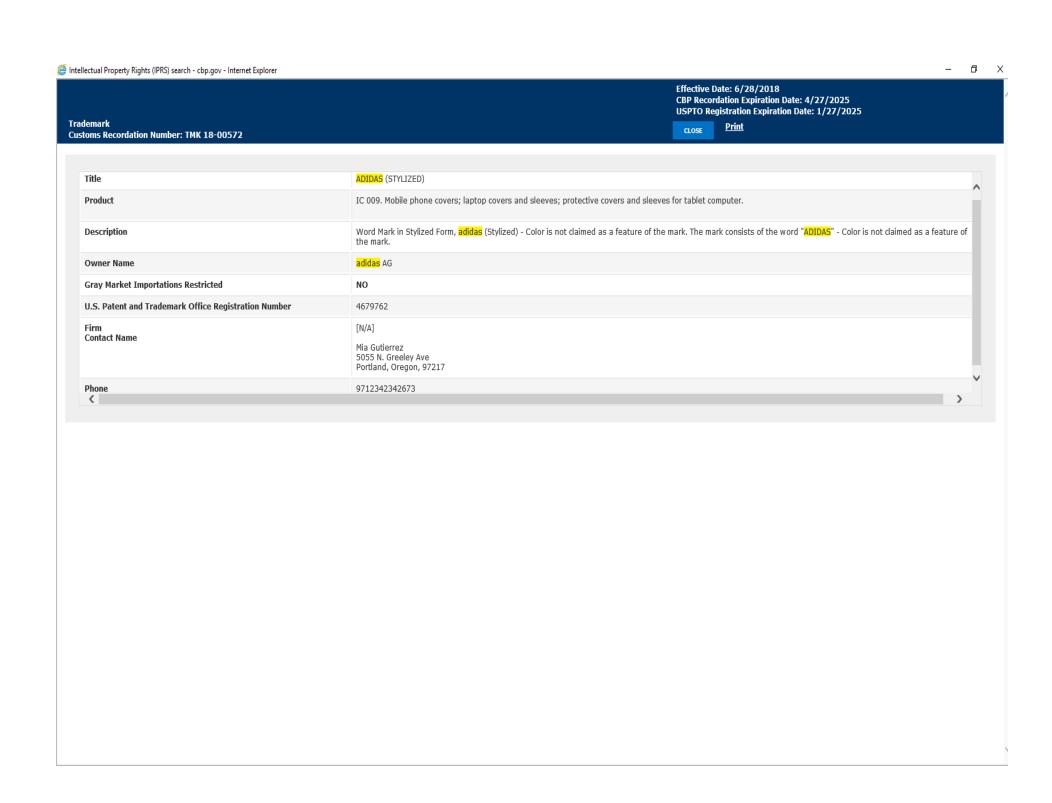
The IPRS database is updated nightly (except Saturday and Sunday) at approx. 4:00 a.m. eastern standard time. Those basing import/exports transactions based upon data contained within IPRS are reminded that recordation information is updated by CBP IPR Branch personnel daily.

### **Related CBPAPPS Information:**

U.S Customs & Border Protection (CBP) IPR Enforcement

Please submit any technical concerns related to IPRS to CBP website technical questions.





# Product Identification Guides

https://www.cbp.gov/sites/default/files/documents/IPR %20Product%20ID%20Training%20Guide.pdf





