

BORDER SEIZURE PROCEEDINGS

PROTECT YOUR RIGHTS – DEFEND YOUR RIGHTS



In many countries worldwide, customs authorities support rights holders in the fight against product and brand piracy with the help of the so-called border seizure procedures.

Border seizure procedure means that customs authorities can carry out random checks on goods in border traffic, i.e., import, export, and transit in postal, air, sea, road, and rail traffic, and suspend the release of possibly infringing goods to the recipient. If the assumption of infringement is confirmed, the customs authorities can destroy the goods after a certain procedure.

The number of seizures by the German customs authorities and the value of the seized goods are considerable:

/ GENERAL OVERVIEW			
	2018	2019	2020
Number of goods seized	37.698	36.324	24.333
Quantity of seized goods	5.066.261	5.164.841	3.678.786
Value of seized goods	196.696.943	224.448.048	238.870.400

Source: Generalzolldirektion, Gewerblicher Rechtsschutz - Statistics for the year 2020

Prerequisite: Border Seizure Application

The customs authorities do not act on their own initiative, only upon application. These applications must be made directly to the customs authorities. Depending on the area you want to cover and the rights you want to protect, you are obliged to select a procedure as well as the areas or countries.

- **EU-wide procedure** (Union applications according to EU Regulation No. 608/2013):
The prerequisite is a Union application, an application for action by the customs authorities submitted in an EU Member State and valid in that member state and at least one other member state.
- **National procedures** (National applications according to EU Regulation No. 608/2013):
The requirement is a national application, an application for action by the customs authorities, which is valid only in the member state in which it was submitted.
- **Domestic German procedure** (according to German legal provisions):
The prerequisite is a request under German law, a request for seizure by the customs authorities, which is only applicable in the area of application of the corresponding national provision, e.g., Trade Mark Act, Design Act, Patent Act etc.
- **Customs procedures in other countries** (according to country-specific legislation):
Border seizure procedures do not only exist in Europe and its member states, but in many other countries as well (e.g., UK, Japan, Australia, South Korea, Turkey).

Particularities of the Small Consignment Procedure

According to EU Regulation No. 608/2013, Article 26, a so-called small consignment procedure is possible, but must be applied for. The procedure serves the purpose of faster and more cost-effective processing. A small consignment is a postal item that contains no more than three units or weighs less than two kilograms. Such items are generally not covered by the other procedures mentioned above.

This procedure often affects recipients who have ordered one or a few products on the Internet, consciously or unconsciously, from abroad. There is no need for rights holders to check whether the products are fake or not.

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BRAND PROTECTION

- Trademark research / -registration
- Infringement / gathering of evidence
- Border seizure procedures
- Criminal law / litigation
- Civil law / compensation for damages

WE CARE ABOUT YOUR BRANDS

As a law office specialized in trademark protection, we comprehensively, efficiently and effectively consult companies in the field of brand protection.

Costs of the Border Seizure Procedures

Even though border seizure applications are generally free of charge, fees are nevertheless incurred for the respective procedures. The customs authorities charge flat-rate fees, the details of which are set out in Section 9 of the Customs Costs Ordinance in conjunction with Annex 2. Applicants receive an invoice from the customs authorities for each individual case listing the individual fees.

What we do

SELECTION OF PROPERTY RIGHTS AND FILING OF APPLICATIONS

KESSLER LEGAL selects the individual property rights to be included in the border seizure application. On the basis of these property rights, the customs authorities will examine the detained goods. Depending on the type of goods, trademarks, designs, or technical property rights such as utility models and patents, are usually taken into consideration. However, other protective rights can also be included in the border seizure applications. After selecting the property rights, we will file the respective border seizure application for you. Since the applications are valid for one year, we will renew them for you on a regular basis.

CORRESPONDENCE WITH CUSTOMS AUTHORITIES AND OTHER CONTACT PERSONS IN THE INDIVIDUAL BORDER SEIZURE CASES

In the event of a border seizure, customs authorities will send a notification of suspension of release to KESSLER LEGAL, acting as the contact person in the border seizure application. After receipt of a notification, we request information on the goods from the customs authorities, usually photos, sometimes also samples. If KESSLER LEGAL is not itself able to confirm an infringement with certainty, we forward our information to the relevant product inspector of the rights holder with a request for verification. After confirmation of the counterfeiting, we apply to the customs authority for the destruction of the goods.

Simultaneously with the notification of the rights holders, the customs authorities will inform the consignee of the detained consignment. The consignee has the opportunity to object to the destruction of the products.

If the consignee objects to the destruction, the rights holder must initiate legal proceedings within a specified but very short period of time. If he or she does not do so, the goods are released to the consignee, even if they are obviously counterfeited. The customs authorities usually only inform the contact persons about the receipt of an objection, not about the specific deadline. Subsequently, we can take legal action against the consignee.

In small consignments, where this procedure does not apply, we generally only accept the invoice and pay the costs.

In some cases, outside of Germany, we are not able to contact the customs authorities directly, for example if the authorities only communicate with contact persons in their own country.

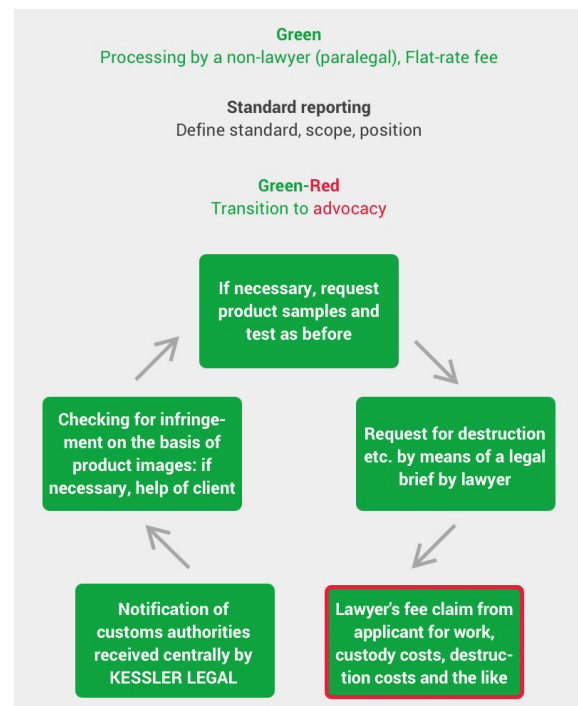
In such cases, we communicate with the respective contact person and, if necessary, instruct him or her on how to proceed after consultation with the rights holder.

CORRESPONDENCE WITH RECIPIENTS OF INFRINGING GOODS

Before KESSLER LEGAL initiates legal proceedings against a recipient, we try to persuade the recipient to withdraw the objection. This is very often achieved by explaining to the recipient that the owner of the (intellectual) property right has no choice but to take legal action and by outlining the costs of such proceedings. In the few cases where the recipient of the good(s) does not withdraw the objection, we initiate court proceedings to prevent the handover of such goods.

FURTHER ACTION AGAINST RECIPIENTS IN CASES OF COMMERCIAL TRADING

Above a certain number of imported counterfeit goods, we can assume that the recipient is acting in the course of trade. In these cases, we issue written warnings for importing goods in violation of property rights and, if necessary, take legal action and/or file criminal charges against the consignee. The recipient of the goods must reimburse the costs for the legal activities in the individual customs procedures if he or she has acted in the course of trade. We also enforce these costs in court.



Activities in border seizure proceedings covered by the flat rate case fee

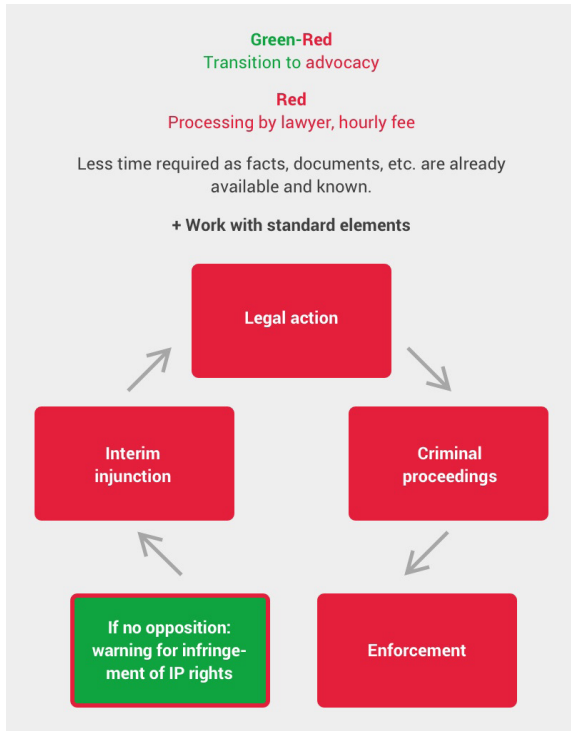
WE DISBURSE ALL INVOICES

We receive, check, and issue all invoices to the rights holders. After that, we issue a single invoice to our clients each month, covering all invoices issued. This greatly simplifies our clients' accounting.

INVOICING PER CASE

KESSLER LEGAL charges a flat rate per case for customs procedures.

This flat rate covers all our activities, including the attempt to convince the recipient of counterfeit goods to withdraw an objection. Only if we have to issue a written warning to the recipient or have to take legal action and/or file criminal charges, the total costs are no longer covered by the case flat rate.



Activities under the border seizure procedure that would not be covered by the case lump sum

Why Kessler Legal is your Ideal Partner for Brand Protection:

BECAUSE WE ARE **VERY EXPERIENCED**

We have extensive experience in all areas and varieties of customs cases and trade mark protection. We currently handle around 600 customs cases for clients per year.

BECAUSE WE PROCEED **DECISIVELY**

We quickly arrive at a proper assessment of the situation and take legal action quickly, consistently and with vigour. We are a well-coordinated team – there are no long and cumbersome decision-making processes.

BECAUSE OUR WORK IS **TRANSPARENT**

Our work is transparent for our clients: we regularly provide detailed case reports on the current status of our clients' cases, activities to date, pending measures, costs incurred and forecasts of realisable claims. The communication with our partners and opponents is always up to date, and accessible to you via cloud.

BECAUSE OUR **PRICE-PERFORMANCE RATIO IS VERY GOOD**

Our efficient way of working saves time and money. Client-oriented, efficient, and innovative work is what distinguishes KESSLER LEGAL as a law firm for trademark law. Standardised processes and the use of legal technology provide us with a productive working environment. Electronic files and short, fast, digital communication channels are a matter of course for us.

You do not pay for our time, but for custom-fit and individual solutions and results. At the same time, we always keep an eye on the economic efficiency of our actions. We attach great importance to a lean cost structure.