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FAQ

Frequently asked questions on counterfeits and the assistance provided by the Federal Office for Customs and Border Security (FOCBS)

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1 Legal basis

- Trademark Protection Act (TmPA; SR [232.11](#)) and Trademark Protection Ordinance (TmPO; SR [232.111](#))
- Designs Act (DesA; SR [232.12](#)) and Designs Ordinance (DesO; SR [232.121](#))
- Federal Copyright Act (CopA; SR [231.1](#)) and Federal Copyright Ordinance (CopO; SR [231.11](#))
- Patents Act (PatA; SR [232.14](#)) and Patents Ordinance (PatO; SR [232.141](#))
- Topographies Act (TopoA; SR [231.2](#)) and Topographies Ordinance (TopoO; SR [231.21](#))
- Coat of Arms Protection Act (CAPA; SR [232.21](#)) and Coat of Arms Protection Ordinance (CAPO; SR [232.211](#))

2 What is a counterfeit?

A counterfeit is an illegal copy of an original. Counterfeiters try to imitate the characteristics, material or look of a legally protected product. Their aim is to take advantage of the reputation of the original, which is founded on a trademark, an indication of source (such as "Swiss Made"), a design or a patent ([Counterfeiting and piracy – Swiss Federal Institute of Intellectual Property](#)).

3 What is piracy?

Piracy is the illegal copying of works such as music, computer software and films. If films, music, books or images are used without a licence, this is called piracy. It is the infringement of copyright and related rights. ([Counterfeiting and piracy – Swiss Federal Institute of Intellectual Property](#)).

4 What is the assistance provided by the Federal Office for Customs and Border Security?

In Switzerland, various pieces of legislation are in place to protect intellectual property, namely the Trademark Protection Act, the Designs Act, the Patents Act, the Federal Copyright Act, the Topographies Act and the Coat of Arms Protection Act. Each of these laws states that it is prohibited to appropriate, imitate or counterfeit another party's trademark, design or patent and to pirate copyrighted works and goods/services. In addition, these pieces of legislation stipulate that the FOCBS is authorised to withhold suspected counterfeits that are in transit or are being imported into or exported from the customs territory and to report them to the proprietor of the relevant rights.

A rights holder may apply for FOCBS assistance if they have specific indications that goods that infringe their intellectual property rights are being brought into or out of the customs territory. Together with the application for assistance, the rights holder provides the FOCBS with all of the information required to distinguish original goods from counterfeits.

The role of the FOCBS is limited to withholding suspected counterfeit goods and notifying the rights holder accordingly. On the basis of this notification, the rights holder alone decides whether the withheld goods are actually counterfeit and whether they should be destroyed, as well as whether they wish to obtain interim measures in court.

It is thus primarily the responsibility of the rights holder to combat counterfeiting.

5 What happens to the counterfeits withheld by the FOCBS?

5.1 Tourist traffic

Tourist traffic goods are goods not intended for trade which someone takes with them on a journey across the customs border.

At the request of the rights holder, goods brought into or out of Switzerland for private purposes in tourist traffic are withheld by the FOCBS if there are reasonable grounds to suspect that they infringe trademark or design rights. The FOCBS applies a simplified procedure for tourist traffic.

If the traveller voluntarily surrenders the suspected counterfeit goods and signs a declaration of surrender, the FOCBS sends the goods for destruction. The FOCBS notifies the applicant of the retention and destruction with a copy of the signed declaration of surrender. The FOCBS does not charge any fees for this procedure. Under certain circumstances, however, the rights holder may demand compensation from the traveller for the infringement of their trademark or design right.

If the traveller does not voluntarily surrender the suspected counterfeit goods, the FOCBS informs the applicant that the goods have been withheld. The applicant has 10 to a maximum of 20 working days to obtain interim measures in court, failing which the FOCBS releases the goods.

In the case of suspected counterfeit goods that are brought into or out of Switzerland in tourist traffic but are intended for trade, the standard procedure for commercial goods traffic applies (see explanations below).

5.2 Commercial goods traffic

Commercial goods include not only goods intended for trade, but also personal goods (other than those in tourist traffic) that are imported by post or courier (so-called online trade).

The FOCBS primarily acts on an existing application for assistance. If the FOCBS discovers suspected counterfeits on the basis of such an application for assistance in commercial goods traffic, it may withhold them for a period of 10 to a maximum of 20 working days. Both the rights holder and the applicant, holder or owner of the goods are informed in writing that the goods have been withheld. In most cases, the rights holder submits a destruction request together with their application for assistance. The destruction of the goods requires the consent of the owner of the goods. Consent is also deemed to be given if the owner does not expressly object to the destruction during the withholding period.

If the owner is convinced that the goods are genuine, he does not have to consent to their destruction, so if he does not agree, he explicitly object the destruction. In this case, it is no longer possible to simply destroy the goods, and the rights holder has to decide whether they wish to obtain interim measures in court. If, in such a case, interim measures are not obtained in court during the withholding period, the FOCBS has to release the goods.

The FOCBS charges fees for its work in the area of assistance in intellectual property law. These are set out in the Ordinance on the Fees Charged by the Federal Office for Customs and Border Security (SR [631.035](#)), Fee Schedule section 12 ff. The FOCBS always charges the fees to the rights holder. It is possible for the rights holder to pass these fees on to the owner of the counterfeit goods.

6 What are the consequences for people who import counterfeits?

The FOCBS is the determining authority in the area of intellectual property law, but it is not responsible for criminal prosecution.

Intellectual property law regulates offences as follows:

- Importing counterfeit trademark or design products for purely private use is not a criminal offence ([Art. 65a of the TmPA](#) and [Art. 41a of the DesA](#)). If the FOCBS takes action on the basis of assistance, counterfeits may be destroyed, and the owner of the goods may receive an invoice from the rights holder for their expenses.

If the owner of the goods does not consent to destruction or if the rights holder suspects that the goods are not intended for private use, the rights holder can go to court to obtain interim measures against the owner of the goods. In such a case, the further course of action is negotiated and decided in court.

- It should be noted that anyone who wilfully infringes intellectual property rights can be prosecuted under criminal law. If the offender acts for commercial gain, they are prosecuted ex officio, which can lead to a custodial sentence of up to five years or a monetary penalty.

7 Where can figures on the counterfeits withheld and reported by the FOCBS be found?

The current intellectual property law statistics on counterfeiting and piracy, as well as the statistics for the two preceding years, can be found on the FOCBS website at www.bazg.admin.ch – Intellectual property, trade and culture.

8 How can the increase in counterfeits detected by the FOCBS in recent years be explained?

The increase can be explained primarily by the huge growth in online trade. Over 90% of the goods withheld arrived in Switzerland in small consignments (small consignments are those containing three or fewer items) in postal and courier traffic.

9 From which online platforms are the most counterfeits sent?

Under Article [22](#) of the Federal Personnel Act (FPA; SR 172.220.1), FOCBS employees are subject to business and official secrecy. For this reason, no information can be provided on how many suspected counterfeits the FOCBS detects from specific consignors.

10 What is the FOCBS's strategy for checking goods? Are all goods checked?

The FOCBS carries out its checks on a situation and risk basis. Risk-based means that the FOCBS does not carry out checks systematically, but rather where and when there is the greatest risk of possible violations of the law. For mission-tactical reasons, no further details are provided on checking activities.

11 How does the FOCBS identify counterfeits? What technologies are used to identify counterfeits?

If a rights holder submits an application for assistance to the FOCBS, it is imperative that they provide both a precise description of the original goods (if possible with photos, drawings, etc.) and a checklist with distinguishing features between genuine and counterfeit goods. These documents are confidential and are not disclosed to third parties. FOCBS employees therefore rely on these detection documents during an inspection. Other indicators such as the origin, packaging and price of a product also play a role when checking suspected counterfeits. FOCBS employees' many years of experience and training in identifying suspected counterfeit goods cannot be ignored either.

It is not within the FOCBS's remit to **conclusively** identify goods as counterfeit. Only the rights holder can do this. If FOCBS employees **suspect** that a product is a counterfeit based on the documents supplied, they report it to the rights holder, who then has to decide whether or not it is actually a counterfeit.

12 What are the biggest challenges for the FOCBS in combating counterfeiting?

In the area of intellectual property law, the FOCBS is the authority that identifies suspected counterfeit goods, withholds them and reports them to the rights holder. It is therefore not part of the FOCBS's remit to combat the production of and trade in counterfeits, and the FOCBS does not have the power to do so. This is primarily the responsibility of rights holders.

13 How can buyers ensure that they are not buying counterfeit branded goods? Are there any special indicators or warning signs they should look out for?

In this regard, please consult the website of Stop Piracy, the non-profit association that works to educate and raise awareness on counterfeiting and piracy: www.stop-piracy.ch – [Recognising counterfeits and illegal offers – Stop-Piracy](http://www.stop-piracy.ch/Recognising-counterfeits-and-illegal-offers-Stop-Piracy).

14 What preventive measures does the FOCBS recommend to businesses that wish to protect their trademarks?

The Swiss Federal Institute of Intellectual Property (IPI) is the centre of competence in the field of intellectual property law and the most appropriate point of contact for questions relating to preventive measures for businesses wishing to protect their trademarks: www.ige.ch/en/.

The Stop Piracy website also provides useful information in this regard: www.stop-piracy.ch/was-tun/infos-fuer-produzenten/.