

PART VIA – INFRINGEMENT OF PATENT, INDUSTRIAL DESIGN, COLLECTIVE MARK, MARK, COPYRIGHT, UTILITY MODEL, LAYOUT-DESIGN, BREEDER’S RIGHT, TRADE NAME OR GEOGRAPHICAL INDICATION

66A. Application for suspension of clearance of goods

- (1) Any owner or authorised user of a patent, an industrial design, a collective mark, a mark, a copyright, a utility model, a layout-design, a breeder’s right, a trade name or a geographical indication may apply, in writing, to the Director-General to suspend the clearance of any goods imported or being exported and detain any goods on the local market, on the grounds that his patent, industrial design, collective mark, mark, copyright, utility model, layout-design, breeder’s right, trade name or geographical indication is being or is likely to be infringed.
- (1A) (a) Notwithstanding subsection (1), where the Director-General has reason to believe that the right of the owner or authorised user of a patent, an industrial design, a collective mark, a mark, a utility model, a layout-design, a breeder’s right, a trade name or a geographical indication or copyright has been infringed or is likely to be infringed, he may, on his own initiative -
- (i) suspend the clearance of the goods imported or being exported for 21 working days;
 - (ia) detain any goods on the local market;
 - (ii) at the same time, give notice, electronically or otherwise, to the owner or authorised user, of the suspension and invite the owner or the authorised user, as the case may be, to lodge, within 21 working days, an application under subsection (1).
- (b) Where an application is not lodged –
- (i) within 21 working days, the Director-General shall immediately waive the suspension and clear the goods imported or being exported or release the goods being detained under subparagraph (ia);
 - (ii) by an owner or authorised user for 2 consecutive cases within a period of 6 months, the Director- General shall not take any action under subsection (1A) unless and until the owner or authorised user has lodged an application under subsection (1).

- (2) An application made under subsection (1) shall specify a period not exceeding 2 years during which the Director-General may suspend the clearance of such goods.
- (3) An application under subsection (1) shall be accompanied by -
 - (a) any evidence that the applicant is the owner or the authorised user of the patent, industrial design, collective mark, mark, copyright, utility model, layout-design, breeder's right, trade name or geographical indication;
 - (b) a statement of the grounds for the application, and in particular, the prima facie evidence showing that his right has been or is likely to be infringed; and
 - (c) particulars relating to the description of the goods making them readily recognisable by Customs, and the place where such goods are to be found.
- (4) The applicant shall furnish adequate security to protect the Director-General for any loss or damage that may result from the suspension of the clearance of the goods and to cover any reasonable expenses likely to be incurred as a result of such suspension.
- (5) Repealed by The Finance (Miscellaneous Provisions) Act 2020

66B. Decision in respect of application

- (1) On receipt of an application under section 66A, the Director-General shall within 7 days of the date of receipt of the application –
 - (a) grant or reject the application; and
 - (b) notify the applicant in writing of his decision.
- (2) The Director-General shall reject an application where the applicant fails to comply with section 66A (4)
- (3) Where the application is granted, the Director-General shall notify in writing the applicant, importer, exporter or his agent of the suspension of the clearance of the goods.

66BA. Public notice

The Director-General shall give public notice of –

- (a) his decision to grant an application under section 66B(3); and
 - (b) his decision to act under section 66A(1A)(a),
- in such form and manner as the Director-General may determine.

66C. Duration of suspension

- (1) Where, within a period of not more than 10 working days after the applicant has been served notice of the suspension under section 66B (3), the Director-General has not been informed in writing that legal proceedings have been initiated by the applicant, the goods shall be released, provided that all other conditions for importation or exportation have been complied with.

- (1A) Notwithstanding subsection (1), where the suspension relates to refrigerated goods, the period to release the goods shall be 3 working days
- (2) The Director-General may, in appropriate cases and on the applicant's request, extend the time limit referred to in subsection (1) by another period of not more than 10 working days.
- (3) The Director-General shall release the goods forthwith where he is informed by the registered owner or authorised user referred to in section 66A that the patent, industrial design, collective mark, mark, copyright, utility model, layout-design, breeder's right, trade name or geographical indication registered in the name of the owner has ceased to be valid provided that all other conditions for importation or exportation have been complied with.
- (4) Notwithstanding subsection (1), where the Director-General has suspended the clearance of goods or has detained goods on the local market under this Part, the Director-General may dispose of the goods at the expense of the importer in accordance with section 61(8) where, within the statutory timeframe provided under subsections (1), (1A) and (2) –
- (a) the owner of the goods informs the Director-General in writing that he agrees –
-
- (i) that he has infringed the rights of the right holder; and
- (ii) to the goods being destroyed at his expenses; and
- (b) the right holder informs the Director-General in writing that –
- (i) he does not intend to take any legal proceedings against the owner of the goods; and
- (ii) he consents to the goods being destroyed.

66D. Inspection and taking of samples

Without prejudice to the protection of confidential information, the Director-General may authorise the owner of a patent, an industrial design, a collective mark, a mark, a utility model, a layout-design, a breeder's right, a trade name or a geographical indication, or copyright owner, or importer, exporter or agent, to -

- (a) inspect the goods of which the clearance has been suspended or which have been detained on the local market;
- (b) remove samples for examination, testing and analysis.

66DA. Exclusion from suspension or detention

- (1) Subject to subsection (2), this Part shall not apply to –

- (a) small quantities of goods of a non-commercial nature, intended for personal use, sent in small consignments or contained in the luggage of a passenger, master or crew, excluding spare parts for vehicles;
 - (b) goods ordered or shipped before the date of a public notice issued under section 66BA, provided the goods are imported and cleared within 3 months from the date of the public notice;
 - (c) goods which have already been imported and are under customs control prior to the public notice; and
 - (d) goods which have already been manufactured in Mauritius for home consumption or export prior to the public notice.
- (2) (a) The goods referred to in subsection (1)(b) to (d) shall be authentic and genuine.
- (b) The authenticity and genuineness of the goods shall be justified by the economic operator.

66E. Interpretation of this Part

In this Part –

“owner” –

- (a) means the registered owner of a patent, an industrial design, a collective mark, a mark, a utility model, a layout-design, a breeder’s right, a trade name or a geographical indication under the Industrial Property Act or the copyright owner under the Copyright Act; and
- (b) includes the owner of a patent, an industrial design, a collective mark, a mark, a utility model, a layout-design, a breeder’s right, a trade name or a geographical indication, or copyright owner, registered with such competent authority outside Mauritius as the Director-General may approve.