

Enforcement of PVRs through Customs Actions in the European Union 欧盟海关行动助力植物品种权执法

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TJEERD F.W. OVERDIJK

Advocaat / Attorney-at-Law / 律师

Vondst Advocaten

vondst

Outline 目录

- Enforcement regimes: EU and national level;
- 执法制度： 欧盟层面及国家层面
- Conservatory / provisional measures;
- 保全/临时措施
- Customs actions in the EU under the Anti-Piracy Regulation:
- 反盗版指令下的欧盟海关行动：
 - Objectives and legal framework; 目标和法律框架
 - How do Customs Actions work in practice? 海关行动具体如何开展?
 - Practical examples. 实例

Many different levels of rules: 多维度规则体系:

- UPOV – art. 13, 14; 《国际植物新品种保护公约》第13、14条
- CPVReg – artt. 94 - 107; 《共同体植物品种权条例》第94–107条;
- Anti-Piracy Regulation (EU 608/2013); 反盗版条例 (EU 608/2013);
- Enforcement Directive EC 2004/48; 执法指令 (EC 2004/48) ;
- National procedural laws; 国家诉讼法;
- National legislations concerning PVRs. 涉及植物品种权的国家立法。



Types of court actions: 法院措施分类:

- Temporary injunctions or other measures (lead time approx. 4 to 8 weeks);
- 临时禁止令或其他措施（申请周期约4至8周）；
- Principal proceedings on the merits (lead time between 12 and 18 months)
- 基于案情实质的主要诉讼程序（诉讼时长12至18个月）；
- Temporary 'ex parte' orders (lead time a few days to a week).
- “依单方申请” 做出临时法院令（申请周期几天至一周）。

Other enforcement actions: 其他执法行动:

- Seizures 扣押:
 - ‘regular’ ‘conservatory’ seizure; 常规 “保全” 扣押;
 - Evidence seizure; 证据扣押;
 - Descriptive seizure; “描述性” 扣押 (以收集证据为目的) ;
 - Taking of samples; 取样;
- Access to documents. 获取文件。

Anti-Piracy Regulation 608/2013: 反盗版条例 (608/2013) :

- Prevent that counterfeit goods will enter the free circulation of goods traded in the EU;
- 防止假冒商品进入欧盟商品交易的自由流通环节;
- Stopping counterfeit goods at the outer borders of the Union is easier than in case they have already entered the common market;
- 将假冒商品挡在欧盟边境外, 相较商品进入后再行阻止更为容易;
- Primary objective: facilitating right holders for the purpose of enforcing their rights; Custom authorities undertake the actual work, but good preparation and sometimes education of Customs is key!
- 主要目标: 为权利人的权利执行提供便利; 海关部门虽然承接具体工作, 但更为重要的是做好前期准备和教育培训!

Anti-Piracy Regulation – scope

反盗版条例：适用范围

- Counterfeit goods (cons 6): 假冒商品（共识6）：
 - No parallel-import (Art. 1.5);
 - 不包括平行进口（第1条第5款）；
 - No goods produced in excess of quantities agreed between producer and right-holder (Art. 1.5);
 - 商品生产量不得超出生产商和权利人商定的数量（第1条第5款）；
- Transit? -> Art. 1.1 sub c
- 转口? -> 第1条第1(c)款

Anti-Piracy Regulation – Application for Action

反盗版条例：行动申请

- Distinction between Union-wide AFA's and national AFA's (cons 14);
- 欧盟层面的行动申请（AFA）与国家层面的不同（共识14）；
- AFA is open for other persons or organisations 'entitled' to enforce the rights (cons 13, art. 3 various groups);
- 行动申请面向“有权”执行权力的其他人或组织开放（共识13、第3条所载各类主体）；
- A Union application requires an EU-wide right (art. 4);
- 提交欧盟申请需持有欧盟层面的权利（第4条）；
- Application may be filed before or after actual suspension (art. 5);
- 可在实际中止令前或中止令后提交申请（第5条）；
- Application form (art. 6);
- 申请表（第6条）；

APR – data to be supplied (Art. 6)

反盗版条例：需提供资料（第6条）

- Information on ‘authentic’ goods and the rights to be enforced;
- “正品” 及待执行权利的信息；
- Information on the counterfeit goods (details of shipments, country of origin, travel data, suspected arrival data, means of transport, identity of importers exporters, holders of goods);
- 假货信息（货物详情、原产地、运输资料、可疑到港资料、运输方式、进口商/出口商/货主身份）；
- Technical details regarding differences between fakes and ‘originals’.
- 假货与正品之间差异的技术细节。

APR – action by customs:

反盗版条例：海关行动

- In the event of a suspicion of counterfeit: suspension of release;
- 怀疑存在假冒时：中止放行；
- (Art. 17 for an existing AFA; Art. 18 for actions ex officio);
- （第17条针对现有行动申请；第18条针对依职权行动）；
- Information to holder concerning:
- 提供给权利人的信息涉及如下方面：
 - Quantity and nature of goods; 商品数量和性质；
 - **On request:** names and addresses of addressee of goods, shipper, declarant, holder; **应要求：**商品、发货人、申报人以及货主的名称和地址；
 - Geographical origin of the goods; 商品地理原产地；
- Options for inspection and taking samples (Art. 19);
- 检验和取样选择（第19条）；
- The use of information obtained (Art. 21).
- 使用所获信息（第21条）。

APR – simplified destruction (art.23)

反盗版条例：简易销毁程序（第23条）

- Simple procedure for the destruction of goods that are under Customs-control without any formal determination concerning infringement;
- 销毁海关管制下商品的简易程序（无需关于侵权的任何正式认定）；
- Conditions 条件：
 - AFA holder communication that he is convinced of infringement;
 - 行动申请人表示确信存在侵权；
 - AFA holder consents to destruction;
 - 行动申请人同意销毁；
 - Holder of suspended goods gives consent or remains silent.
 - 被中止放行货物的货主给予同意或保持沉默。
- In case of objection against destruction proceedings will have to follow for determination of infringement claim;
- 若反对销毁，则必须通过诉讼程序，对侵权索赔进行认定；
- Term: 10 or 3 days; 10-day term is extendable once (Art. 23.4).
- 期限：10天或3天（易腐货物）；适用10天期限时，允许延后一次（第23.4条）

APR – simplified destruction (2): 反盗版条例：简易销毁程序（2）：

- The actual destruction takes place under Customs-control and under responsibility of AFA-holder;
- 实际销毁是在海关管制下发生的，且由行动申请人负责；
- Option to take samples for the purpose of securing evidence (Art. 23.2);
- 可为证据保全目的取样（第23.2条）；
- In the event that no destructions follows and/or no proceedings will be initiated: termination of suspension and release;
- 如果未销毁和/或不启动诉讼程序，则取消中止令，放行货物；
- Declarant or holder of goods may request release against guarantee;
- 货物申报人或货主可请求担保提货；
- Destruction of ‘small consignments’ (Art. 26).
- “小件包裹”的销毁（第26条）。

APR – use of information (Art. 21): 反盗版条例：信息使用（第21条）：

- Disclosure or use of information obtained through Customs action only for well-defined purposes:
- 只能出于事先确定之目的披露或使用通过海关行动获得的信息；
- a) for proceedings to determine whether an IP-right has been infringed;
- a) 为认定是否存在知识产权侵权；
- b) in connection with criminal investigations related to the infringement;
- b) 为与该侵权相关的刑事调查；
- c) in connection with criminal proceedings;
- c) 为刑事诉讼程序；
- d) to seek compensation from the infringer or other persons;
- d) 为寻求侵权人或其他人的赔偿；
- e) to make an agreement that the goods be destroyed;
- e) 为达成货物销毁约定；
- f) to agree with the declarant or the holder of the goods of the amount of the guarantee referred to in point (a) of Article 24(2).
- f) 为认可货物申报人或货主根据第24(2)(a)条提供的担保金额。
- Open question whether information obtained may also be used in proceedings concerning infringements which are not covered by the APR.
- 开放问题：所获信息是否也可用于涉及反盗版条例所涉范围以外的侵权诉讼。

APR – miscellaneous:

反盗版条例：其他

- What are the options to take action against transit trade of infringing goods after exit of ‘manufacturing fiction’ ?
- 废弃“制造假定”理论之后，可选择哪些行动对抗侵权货物的转口贸易？
- After CJEU in re Philips/Lucheng & Nokia (2011) there was only infringement in the event that goods would enter free circulation for commercial purpose (or there was a risk that this would happen);
- 根据欧盟法院对飞利浦/Lucheng 与诺基亚（2011）案的裁决：只有货物出于商业目的进入自由流通环节（或者存在进入自由流通环节的风险）时，才构成侵权；
- Now different again in cases of application of Art. 9 lid 4 EUTM Reg 2015/2424 or similar national provisions;
- 适用欧盟商标条例2015/2424第9条或类似国家规定时，目前情况又有变化；
- How is this with rights other than trademarks?
- 对于商标之外的权利，该如何处理？

Conclusions 结论

- The suspension of the release of 'counterfeit' plants by Customs can prove to be a very effective tool to combat illegality in plants;
- 海关中止放行 '假冒' 植株是打击植物领域违法活动的有效手段;
- In most EU countries Customs see the value of Customs Actions for right holders and Customs are very eager to contribute and deliver results;
- 在多数欧盟国家, 海关认可“海关行动”对权利人的价值, 也有强烈意愿作出贡献, 产生成效;
- Providing up to date and relevant information which helps to detect counterfeit is key to the success of an Application for Action.
- 提供有助于发现假冒品的最新相关信息是行动申请取得成功的关键。

Questions? 问题?



Contact 联系方式:

tjeerd.overdijk@vondst.com

+31 (20) 5042000