

December 2, 2011

The Honorable Jose Gonzales Morfin
President
Senate of the Republic
Av. Paseo de la Reforma No. 135
Homiciclo Piso 6, oficina 16
Colonia Tobacalera
Mexico D.F. 06030.
MEXICO

Re: Mexico's Laws on Parallel Imports

Dear Senator Jose Gonzales Morfin:

The International Trademark Association (INTA) appreciates this opportunity to provide you with the attached comments on proposals for changes to Mexico's legal system regarding parallel imports. This is an issue of utmost importance for our Association as a global organization representing trademark owners.

INTA is a not-for-profit membership association of more than 5,900 trademark owners and professionals firms from more than 190 countries. It was founded in 1878 and is dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective national and international commerce. INTA members share common interests in the protection of trademarks and the development of trademark law, and they rely on INTA to represent and advocate for those interests with national governments and international organizations. INTA's diverse membership includes multinational corporations and other business enterprises of all sizes, intellectual property and general practice law firms, trademark agent firms, service firms, trademark consultants and academic institutions. Currently, INTA has over 77 member enterprises and firms in Mexico. Please visit our website for more information: <http://www.inta.org>.

Last year, our Association submitted a letter in support of an initiative introduced by Senator Ocejo, (the "Ocejo Bill"), to create a Trademark Recordation System within Customs which included, among other thing, addressing the problem of parallel imports. We understand that certain challenges prevented the passage of this bill in the Mexican Senate. One of the concerns raised was the need to have a clear definition of parallel imports in Mexican law in order to differentiate parallel imports from counterfeits products. Another major challenge to the initiative was the need to introduce fundamental changes in Mexico's current parallel import

regime which is based on the principle of international exhaustion, that is, once a trademark owner places goods on the market anywhere in the world, they are allowed to be imported into Mexico. We strongly believe that Mexico's parallel imports regime should be changed to one closer to "national exhaustion" as discussed in the attached paper. We also believe that the debate on this issue should be based on a clear understanding of the conceptual differences between international and national exhaustion, and the implications for the local market, trademark owners and consumers.

In the attached paper, INTA explains why parallel imports are a concern in Mexico and recommends amending current laws and regulations to ameliorate the harms to both consumers and rights holders that result from parallel imports. Such action would complement Mexico's current efforts to combat counterfeits through measures such as the establishment of a trademark recordation system at Customs. As in other countries, the Customs recordation system could be used as a tool to enforce any new parallel imports laws by allowing rights holders to stop imports if they differ materially from the authorized goods sold in Mexico under the same trademark. Such differences may include those relating to formulation, fragrance, color, calories, lot code removal, size, fill volume, packaging language, guarantees, labeling and instructions, and any other difference that is likely to be of significance to consumers when making a purchase decision. Such material differences often lead to consumer confusion and disappointment which can damage the reputation of brand owners in terms of quality and consistency.

The attached paper was prepared with the assistance of INTA members who are experts in the field of trademark law from Mexico, Brazil, Canada, Chile, Colombia, Ecuador, the United States and Venezuela. We hope that our analysis and recommendations will be useful for members of the Senate as it continues to explore how the exhaustion regime for parallel imports impacts consumers and trademark owners in Mexico.

Should you have any questions or require additional input on these or other issues, please contact Laura Cruz at lcruz@inta.org

Sincerely,

A handwritten signature in blue ink that reads "Alan C. Dreuxen". The signature is written in a cursive style with a large initial "A" and "D".