

Intellectual Property Protection and The De Minimis Loophole

19.03.2025



The recent Forever 21 bankruptcy filing highlights a critical issue for intellectual property protection in e-commerce: the “de minimis” customs exemption. This seemingly innocent trade rule has become a major pathway for counterfeit goods and IP infringement.

What Is the De Minimis Exemption and Why Does It Matter for Intellectual Property Protection?

The de minimis exemption allows shipments valued under \$800 to enter the United States duty-free with minimal customs oversight. Originally designed to simplify trade for small packages, this exemption has transformed into a significant vulnerability in trademark protection strategies.

Forever 21’s cochief restructuring officer explicitly cited this loophole in their recent bankruptcy filing:

“The Debtors’ business has been materially and negatively impacted by the ability for online retailers to take advantage of the ‘de minimis exemption’ which exempts goods valued under \$800 from import duties and tariffs.”

This admission from a major American retailer underscores how foreign e-commerce platforms like Shein and Temu have leveraged this customs rule to gain competitive advantages – and potentially facilitate IP infringement.

How the De Minimis Exemption Undermines Intellectual Property Protection Strategies

For brands concerned with ecommerce brand protection, the de minimis exemption creates several critical challenges:

1. Reduced Customs Scrutiny Enables Counterfeit Goods

With approximately 1.4 billion shipments entering the US under this exemption last year, customs officials simply cannot thoroughly inspect each package. This lack of oversight creates a perfect environment for counterfeit products to enter the market undetected.

2. Unfair Competition Against Legitimate Brands

Traditional retailers like Forever 21 import merchandise in bulk shipments subject to tariffs, duties, and stringent IP compliance measures. Meanwhile, foreign direct-to-consumer businesses can bypass these same tariffs and compliance checks, creating an uneven playing field.

3. Challenges for Counterfeit Detection and Prevention

When potentially infringing products arrive one small package at a time instead of in bulk shipments, traditional counterfeit prevention solutions become significantly less effective. This fragmented approach makes systematic enforcement of intellectual property rights extraordinarily difficult.

Brand Protection Strategies for E-commerce in the De Minimis Era

Facing these challenges, brands must adapt their IP protection strategies:

Proactive Digital Monitoring

Effective brand protection now requires identifying potential infringements before products even enter the supply chain. Digital monitoring tools that scan foreign e-commerce platforms can flag potential IP violations early.

Enhanced Trademark Protection Documentation

Maintaining comprehensive documentation of trademarks, designs, and other intellectual property assets is crucial for swift enforcement actions when infringements are detected.

Collaborative Industry Approach

Industry associations and brand coalitions can advocate for policy reforms while sharing intelligence about counterfeit prevention strategies. The Forever 21 bankruptcy statement may signal a turning point in retailers' willingness to publicly address this issue.

The Policy Landscape and Future Outlook | Intellectual Property Protection

The de minimis exemption briefly entered public consciousness in February 2025 when it was temporarily suspended, causing significant disruption to cross-border e-commerce. The quick reversal of this decision highlights the complexity of addressing this issue through policy changes alone.

For brands concerned with intellectual property protection, this evolving situation requires a multi-faceted approach combining technological solutions, legal strategies, and consumer education about the risks of counterfeit products.

As more traditional retailers face pressures similar to Forever 21, the conversation around proper IP protection in the age of cross-border e-commerce will only intensify, potentially reshaping both regulatory frameworks and brand protection strategies.

Is your brand protected against infringement through the de minimis loophole? Contact our team today to learn about comprehensive IP protection solutions tailored for the challenges of modern e-commerce.

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