

Doing Business in Canada: Protecting Luxury Brands From Counterfeiting

Part 4

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This article is Part 4 of *Protecting Luxury Brands From Counterfeiting*, a four-part series on the legal and practical issues luxury brands most often face when operating in or selling to Canada. Part 1 addressed the upstream question of legal and operational readiness. Part 2 turned to the border itself: the statutory framework, the operational mechanics of the Canada Border Services Agency (“**CBSA**”) Intellectual Property Rights Program and the response planning a luxury brand should have in place before a detention occurs. Part 3 addressed issues international brands commonly face when counterfeit goods are promoted or sold through online marketplaces, social media accounts, websites and abusive domain names. Part 4 focuses on what enforcement looks like after counterfeit activity is identified, including civil proceedings, criminal options, customs detention and recent Canadian precedents that provide guidance.

Canada’s anti-counterfeiting enforcement framework is largely rights-holder driven. As the main tool, civil proceedings allow the brand to control timing, seek injunctions, preserve evidence, obtain destruction orders and pursue monetary relief. Criminal enforcement and customs detention can be powerful, but usually require strong evidentiary background, co-ordination and a clear commercial-scale or public-interest basis.

We are pleased to support your business activities in Canada. If you have questions with respect to any portion of the below or require further information on a topic not addressed here, please do not hesitate to contact us.

Category	Question	Answer
1. Enforcement Path	Is Canadian anti-counterfeiting enforcement mainly rights-holder driven?	Yes — rights holders usually investigate, preserve evidence, send demands and commence civil proceedings. The CBSA and law enforcement can assist in defined circumstances, but the brand usually needs to drive the effort and prepare the evidence. ¹

¹ <https://www.lexology.com/library/detail.aspx?g=ccf4e25d-31c1-427b-9ec4-3fc58d94b43c>;
<https://www.lexology.com/library/detail.aspx?g=927d8070-a807-4b3e-bb28-7a4574119a9a>

2. Civil Claims	Can an international brand sue counterfeiters in Canada?	Yes — claims may be brought for trademark infringement, passing off, depreciation of goodwill, copyright infringement or related statutory/common law claims. Depending on the facts, proceedings may be brought in the Federal Court or a provincial superior court. ²
3. Civil Remedies	What civil remedies are available?	Available remedies may include injunctions, preservation orders, site-blocking orders, damages, an accounting of profits, punitive damages, destruction or other disposition of offending goods and materials, and recovery of a portion of legal costs. ³
4. Statutory Damages	Are statutory damages available for counterfeit goods?	It depends — statutory damages are available under the <i>Copyright Act</i> for copyright infringement, ranging from \$500 to \$20,000 per work for commercial infringements. Although not codified by statute, a “general damages” framework for trademark infringement via counterfeit sales has been established in the jurisprudence. The framework takes into account the size/type of the counterfeit operation, the rate of inventory turnover and the number of rights holders or types of products involved.
5. Preservation Orders	Can a brand preserve or seize evidence before trial?	Yes, in appropriate cases — a rights holder may seek preservation relief via Anton Piller and/or Mareva injunction orders where the appropriate legal test is met.
6. Criminal Options	Can counterfeiters face criminal prosecution?	Yes — the <i>Trademarks Act</i> creates offences for commercial-scale trademark counterfeiting. The <i>Copyright Act</i> also contains offences for knowing infringement and related conduct and the <i>Criminal Code</i> includes offences for trademark forgery and passing off.

² *Trademarks Act*; <https://www.worldtrademarkreview.com/article/canada-procedural-options-combating-counterfeits-in-canada>

³ *Trademarks Act*

7. Penalties	Can criminal penalties apply?	Yes — certain <i>Trademarks Act</i> and <i>Copyright Act</i> offences may carry, on indictment, fines of up to \$1 million, imprisonment of up to five years or both; and, on summary conviction, fines of up to \$25,000, imprisonment of up to six months or both.
8. Damages Precedents	Have Canadian courts awarded major damages in counterfeiting cases?	Yes — the Federal Court has issued damages awards ranging from hundreds of thousands of dollars to multimillion dollars across several counterfeit cases, demonstrating the value of combining trademark and copyright claims where the facts support both. ⁴
9. Online Remedies	Have Canadian courts ordered internet-specific IP relief?	Yes — Canadian courts have granted site-blocking and de-indexing relief in specific IP contexts. These remedies are fact-specific but demonstrate that Canadian courts may craft practical orders where ordinary relief would not effectively stop online infringement. ⁵
10. Contempt / Jail	Can failure to comply with court orders lead to jail time?	Yes — in recent years, both the Federal Court and provincial courts have taken a harder line, including the imposition of jail time for contempt arising from disobedience of an Anton Piller order.

A strong Canadian enforcement program should never rest on a single tool. Civil proceedings give brands the most direct control, but customs detention, criminal referral, online disruption and a growing body of Canadian precedent each stand ready to escalate the pressure where the facts demand it.

We would be pleased to assist with investigations, cease and desist demands, CBSA RFA filings, preservation and Anton Piller motions, civil claims, criminal referrals, settlement negotiations and destruction protocols.

⁴<https://www.smartbiggar.ca/insights/publication/the-federal-court-applies-its-new-summary-trial-rules-in-the-largest-anti-counterfeiting-award-in-canadian-history>; *Louis Vuitton Malletier S.A. v. Singga Enterprises (Canada) Inc.*, 2011 FC 776.

⁵ *Teksavvy Solutions Inc. v. Bell Media Inc.*, 2021 FCA 100; <https://www.torys.com/our-latest-thinking/publications/2021/05/court-of-appeal-upholds-canadas-first-site-blocking-order>; *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34.

Have more questions about doing business in Canada? Please [click here](#) or scan the QR code to access Aird & Berlis LLP's Market Expansion Dashboard, your one-stop-shop for market expansion resources.



Disclaimer: This article offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the issues that concern them.

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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.

Fiona is pleased to offer a multitude of resources answering often-asked questions about expanding into Canada, including [this video](#) and [this one-page guide](#).



Ryan T. Evans

Partner

Ryan is a member of the firm's Intellectual Property and Litigation & Dispute Resolution Groups. He handles enforcement and infringement cases and has extensive experience in patent, trademark and design, copyright and trade secret matters. Ryan represents a diverse range of clients, including companies in the petrochemical, consumer goods, manufacturing and agricultural science industries.

Ryan is also involved in anti-counterfeiting efforts, brand enforcement initiatives and Trademarks Opposition Board proceedings. He assists clients in developing internal monitoring protocols and strategies for trademark protection.

Ryan appears regularly in courts across Canada, including the Ontario courts, the Federal Court and the Federal Court of Appeal. His expertise extends to mediation and arbitration, reflecting his commitment to resolving disputes efficiently and effectively.



Alyssa Marchese

Former Articling Student

Alyssa summered at the firm in 2023 and 2024. She recently graduated from the JD program at Osgoode Hall Law School. During law school, Alyssa held a variety of leadership roles, including Co-President of the Canadian Italian Association of Osgoode, Communications Director of the Environmental Law Society, Marketing Director of the Osgoode Society for Corporate Governance, Events Coordinator of the Osgoode Emerging Technology Association and Osgoode Ambassador to the Ontario Bar Association. She also participated in the Osgoode Business Clinic and worked as a caseworker at the Investor Protection Clinic.

Prior to law school, Alyssa earned a Bachelor of Environmental Studies from York University, graduating *summa cum laude*, and was recognized with many awards for community leadership and academic achievement. She was active in student leadership, leading the Italian Student's Association, acting as a Peer Mentor Coordinator, and serving as a member of the Equity Committee, the Faculty Council and the Inclusion Group.