



**The ASA-vengers:
When Things Go Wrong -
A Discussion of Laws and Solutions**

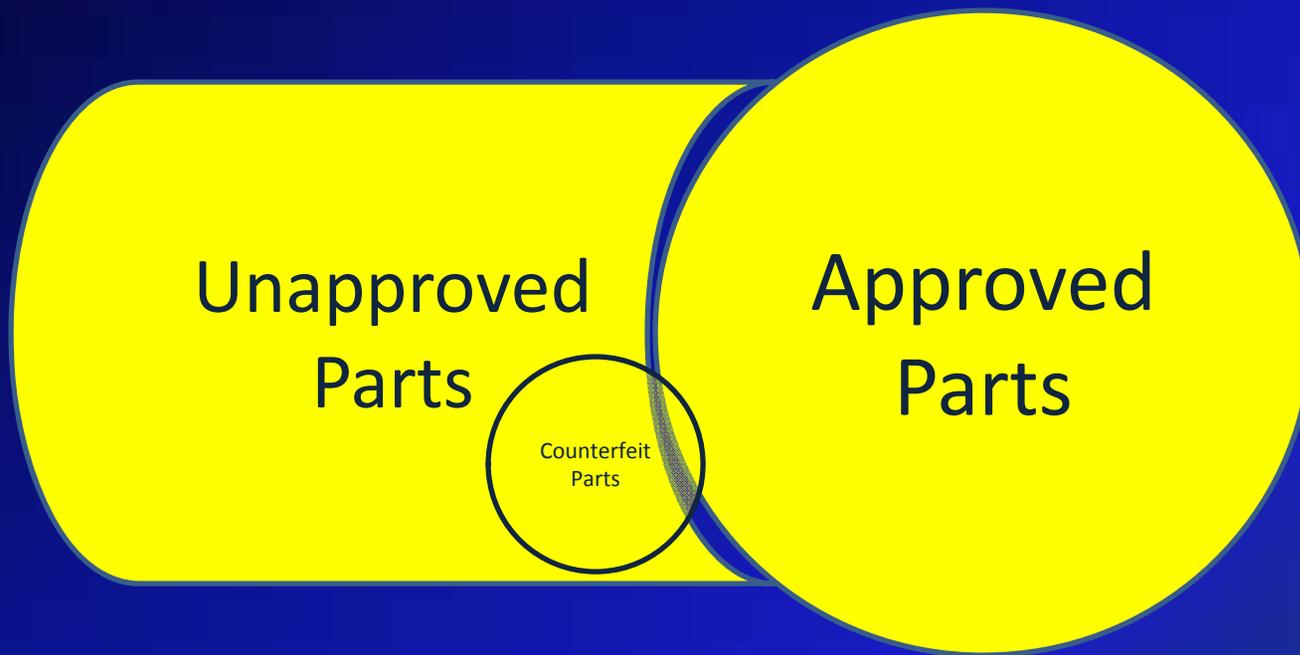
ASA 2015 Conference

Workshop M

Counterfeit Parts

Identifying Counterfeits
and
Addressing the Concerns

The World of Parts



What is Counterfeiting?

Lanham Act

- Unauthorized use in commerce of a trademark so as to cause
 - confusion,
 - mistake, or
 - deceit

Trademark Law

- Protects distinctive marks from use by others in commerce that leads to confusion, deception, or mistake
- EXAMPLE: “palming off” something you created *as if it were* the OEM’s product
- EXAMPLE: “reverse palming off” something the OEM created *as if it were* something that you created

Basic Guidance

- Make sure you properly identify articles that you sell
- If a part is an aftermarket replacement part, it is OK to identify the part that it replaces, as long as you are clear and do not imply that the part is the replaced part

- **OK:**

P/N: A1234567 (replacement for [OEM Name] Q345987)

- **NOT OK:**

P/N: A1234567 (same as [OEM Name] Q345987)

What if you Accidentally Misrepresent a Part?

- Notify the other party in writing immediately
 - If they act in reliance on your misrepresentation, then you may be liable
 - If you can prove you notified them, then they cannot act in reliance on your misrepresentation thereafter
- Provide replacement paperwork that corrects the error
- Ask the customer to return the incorrect paperwork or confirm its destruction in writing

Tips for Identifying Counterfeits

- Know your suppliers
 - Rely on programs like AC 00-56 that help ensure adequate quality systems

Tips for Identifying Counterfeits

- Have a Robust Receiving Inspection Process
 - Use the process to protect your company
 - Train your inspectors
 - ASA offers low-cost training workshops
 - Investigate red flags

Unusual Finish and No Inspection Stamp



Tips for Identifying Counterfeits

- Look at the Parts – Not Just the Paperwork
 - Look for visual discrepancies
 - Make sure the parts match the paperwork

Part Number Appears to Be Vibrapeened



Tips for Identifying Counterfeits

- Read the documentation
 - Identify and investigate incongruities
 - If it does not look right, or if looks different from usual, then figure out why!
 - GE recently issued an all-operators letter for parts that were accompanied by paperwork that misrepresented the time on the parts

No Documentation (OOP)



Documentation Review Tips

- Make sure part numbers match the part number listed on the documentation
- Make sure serial numbers match the serial number listed on the documentation
- Make sure the part that arrived matches the purchase order description
- Look at the signatures – do they appear to be robo-signed and is this normal?

Different Finish



Responses

- If you receive aircraft parts you suspect to be counterfeit, you should work with an experienced attorney to remedy the situation
- You may need to make choices that affect your legal rights
 - A decision to relinquish the parts to the FAA could inhibit your ability to return them for a refund
 - Refusing to cooperate with the FAA could affect their willingness to support your claims

Reporting SUPs and Counterfeits

- FAA SUPs Hotline: 1-800-255-1111
- FAA (SUP Report) Form 8120-11
 - <http://www.faa.gov/documentLibrary/media/Form/8120-11%20Form.pdf>
- You may wish to contact a law enforcement office, at the state-level or at the federal level (depending on the actual fact pattern)

Some Other Helpful Laws

Identifying Relevant Laws

False and Misleading Regulation

- Definitions -

- 14 C.F.R. § 3.5 Statements about products, parts, appliances and materials.
 - (a) Definitions. The following terms will have the stated meanings when used in this section:
 - *Airworthy* means the aircraft conforms to its type design and is in a condition for safe operation.
 - *Product* means an aircraft, aircraft engine, or aircraft propeller.
 - *Record* means any writing, drawing, map, recording, tape, film, photograph or other documentary material by which information is preserved or conveyed in any format, including, but not limited to, paper, microfilm, identification plates, stamped marks, bar codes or electronic format, and can either be separate from, attached to or inscribed on any product, part, appliance or material.

False and Misleading Regulation - No Fraud -

- 14 C.F.R. § 3.5 Statements about products, parts, appliances and materials.
 - (b) Prohibition against fraudulent and intentionally false statements. When conveying information related to an advertisement or sales transaction, no person may make or cause to be made:
 - (1) Any fraudulent or intentionally false statement in any record about the airworthiness of a type-certificated product, or the acceptability of any product, part, appliance, or material for installation on a type-certificated product.
 - (2) Any fraudulent or intentionally false reproduction or alteration of any record about the airworthiness of any type-certificated product, or the acceptability of any product, part, appliance, or material for installation on a type-certificated product.

False and Misleading Regulation

-No *Materially* Misleading Statements-

- 14 C.F.R. § 3.5 Statements about products, parts, appliances and materials.
 - (c) Prohibition against intentionally misleading statements.
 - (1) When conveying information related to an advertisement or sales transaction, no person may make, or cause to be made, a material representation that a type-certificated product is airworthy, or that a product, part, appliance, or material is acceptable for installation on a type-certificated product in any record if that representation is likely to mislead a consumer acting reasonably under the circumstances.
 - (2) When conveying information related to an advertisement or sales transaction, no person may make, or cause to be made, through the omission of material information, a representation that a type-certificated product is airworthy, or that a product, part, appliance, or material is acceptable for installation on a type-certificated product in any record if that representation is likely to mislead a consumer acting reasonably under the circumstances.

False and Misleading Regulation

- Truth is a Defense -

- 14 C.F.R. § 3.5 Statements about products, parts, appliances and materials.
 - (d) The provisions of § 3.5(b) and § 3.5(c) [*the false and misleading provisions*] shall not apply if a person can show that the product is airworthy or that the product, part, appliance or material is acceptable for installation on a type-certificated product.

False and Misleading Regulation

- Defensive Tips -

- Be careful of the allegations you make about an aircraft part
 - Certify only what you know
 - If your knowledge is limited, then make that clear
- Be wary of customer-provided certifications
 - Read carefully before signing
 - Even if it appears to be a standard form, like a SPEC 106
- Best practice is for distributors to pass along the documentation they received, and limit the C of C to the scope of those received documents

Criminal Fraud Involving Aircraft Parts

18 USC § 38 “Fraud involving aircraft or space vehicle parts in interstate or foreign commerce”

- This criminal statute is violated by a person who knowingly and with the intent to defraud:
 - Falsifies or conceals a material fact concerning any aircraft part
 - Makes any materially fraudulent representation concerning any aircraft part
 - makes or uses any materially false record concerning any aircraft part
 - Exports from any aircraft part by means of a fraudulent representation
 - Imports any aircraft part by means of a fraudulent representation
 - Sells, trades, or installs any aircraft part by means of a fraudulent representation

Documentation Issues

What Do You Do if the Paperwork is
Wrong?

Sometimes Documentation is Flawed

- Wrong quantity
- Wrong serial number
- Wrong part number
- Wrong data reference (e.g. wrong manual reference for approval for return to service)

Correcting Unregulated Documents Like a SPEC 106 form or C of C

- Best Practice:
 - Send a copy of the signed document to the originator with a written request for correction
 - Replace the flawed document with the corrected document
- Another practice:
 - Get written instructions for the correction from the originator, if you can
 - Make the correction yourself, but plainly identify the source of the alteration

Correcting Unregulated Documents

- When correcting commercial documents, always consider:
 - How do I avoid misrepresentations?
 - How do I avoid the appearance of fraud?
 - Is there any rule or law that affects this document or this correction?
 - Are there instructions for completing the document that might include correction standards?

Correcting Errors on an 8130-3 Tag

- The originator may reissue FAA Form 8130-3 to correct a typographical error
- Send a written request and a copy of the incorrect form to the originator.
- **The originator does not need to re-verify the condition of the product or article.**
- Block 12 language:
 - “This FAA Form 8130-3 corrects the error(s) in Block(s) [enter block number(s) corrected] of the FAA Form 8130-3 [enter form tracking number] dated [enter issuance date] and does not cover conformity/condition/release to service.”
- The reissued form must be marked as such
- Both forms should be kept together

What if the Originator Refuses to Correct an Error?

- Did your purchase order specify documentation?
 - If the documentation is a material part of the order, then the seller's refusal to correct errors may be in breach if it undermines the merchantability of the part
 - E.g. if the documentation is misleading, then selling the part with the documentation would violate the FAA's false and misleading rule

Read the Rules!

- Many documents have completion instructions

Document	Instructions
FAA Form 8130-3	FAA Order 8130.21H
EASA Form One	Comm'n Reg. 1702/2003 App'x I Comm'n Reg. 2014/2003 App'x I
Spec 106 Parts or Material Certification	ATA Specification 106

- Follow the instructions! For example, some PMA parts are exported to Europe without the required statement as described in the EU-US Bilateral Agreement

8130-3 Tag Trivia

- If a an 8130-3 tag is completed as an export tag to a country that does not have any special conditions, then there is no need to state that the part complies with the special import conditions
 - This is true of most import destinations
 - Special conditions are listed in FAA Advisory Circular 21-2

Sometimes the Document Isn't Really Flawed

- Sometimes the documentation is right but your customer wants something that does not or cannot exist
 - Use this as an opportunity to educate the customer
 - Make sure you explain *in writing* why your documentation is correct
 - Be reasonable!

Correct Documentation Example

- Sometimes a customer asks for an 8130-3 on standard parts
- The FAA used to issue 8130-3 tags for exports of standard parts
 - The FAA changed the regulations to remove this feature
- FAA/EASA policy frowns on the issue of approval forms for standard parts
 - FAA Order 8130.21H para 2-4(c)
 - EASA AMC No. 2 to 21A.130(b)
- A production approval holder can obtain an 8130-3 tag for a standard part
 - But this is no longer a standard part – it is a production-approval part
- The US-EU bilateral confirms that a receiving party may receive a standard part with a certificate of conformance (C of C)

Import / Export Issues

What Do You Do if You, or Someone
Else, Improperly Imported or
Exported an Article

First of All, Understand the Law

- If you missed yesterday's discussion of export compliance, then be sure to attend an ASA workshop this Fall so you can understand the compliance elements for exporting aircraft parts

What if you Exported an Article Without a License?

1. Have the article quarantined pending analysis
2. Analyze the shipment and confirm whether a license was required
3. If a license was required, identify whether a license exception may have applied
4. If no license exception applies, consider whether a self-disclosure is appropriate
5. Perform a root cause analysis and revise your export compliance system to address the root cause

Use a competent law firm to support the legal analysis!

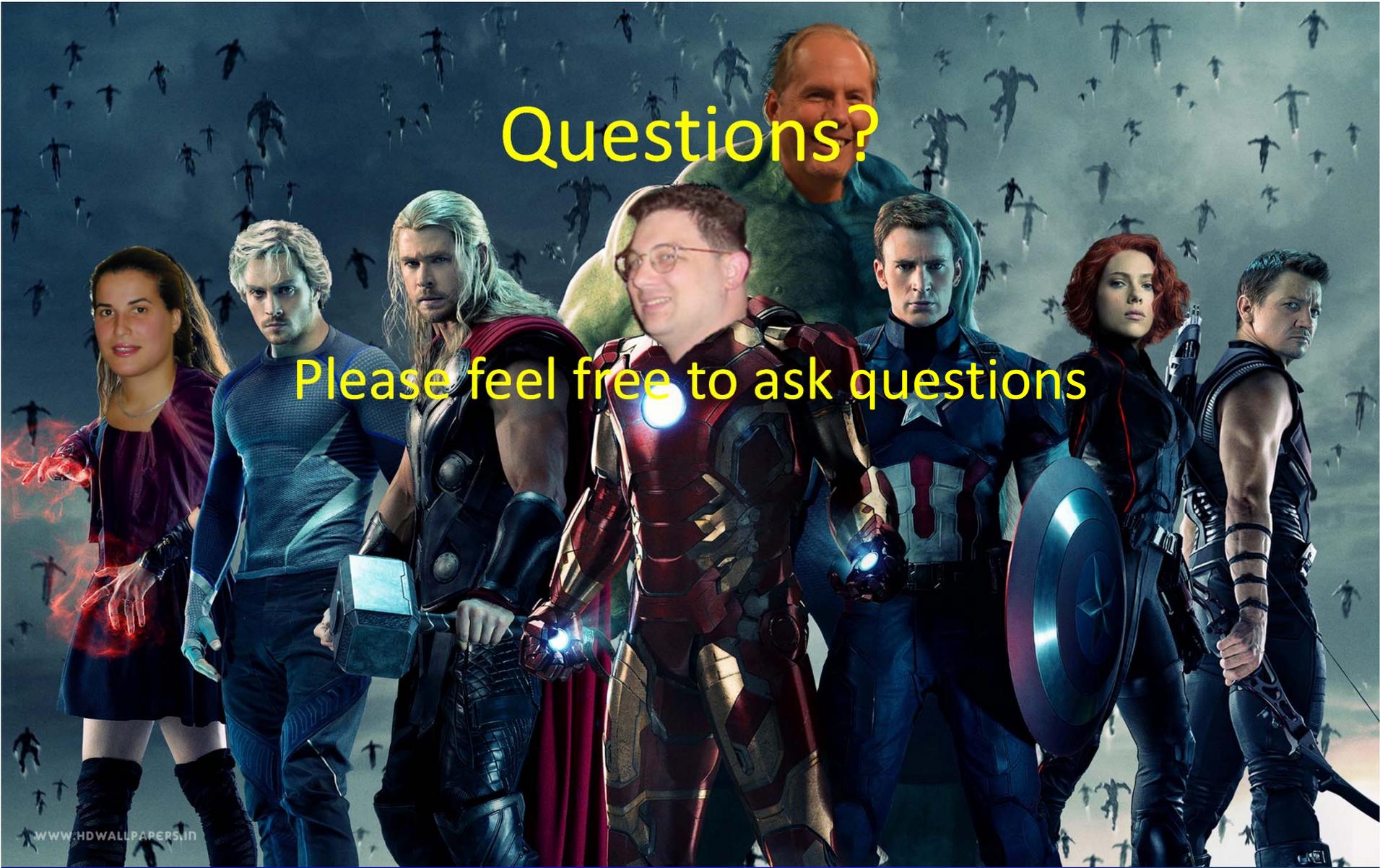
What if you Made a Mistake in the Import of an Article?

1. A common mistake is to mischaracterize an article upon import
 - Paying tariff on aviation article (so you want a refund)
 - Article is characterized as an aircraft article when there was a more specific tariff code (e.g. for bearings)
 - Lot shipments where the actual lot is different from the manifest
2. Analyze the shipment and confirm whether it was properly characterized
3. If it was not properly characterized then determine if a tariff exception may have applied (like US goods returned)
4. File for correction in a timely manner
 - Correct clerical errors discovered before liquidation of an entry by filing an amended entry
 - File an administrative protest within 90 days of the date of liquidation of the entry
 - Clerical errors, mistakes of fact, and other inadvertent mistakes (but *not errors of law*) may be filed within one year of the date of liquidation of the entry (must be manifest from the record or established by documentary evidence)
5. Perform a root cause analysis and revise your import compliance system to address the root cause

Use a competent law firm to support the legal analysis!

Getting Involved

- If you encounter an issue, then let us know about it
 - We can help point you in the right direction to address your issue
 - We can use your issue as the basis for an informative newsletter/blog article to help keep the rest of the industry in compliance
- **ASA is your trade association!**

A promotional image for the movie 'Avengers: Age of Ultron'. It features the main cast members: Wanda Maximoff, Quicksilver, Thor, Iron Man (with a man's face), Captain America, Scarlet Witch, and Hawkeye. The background is a dark sky filled with many small, flying Ultron drones. The text 'Questions?' is overlaid in yellow at the top, and 'Please feel free to ask questions' is overlaid in yellow in the center.

Questions?

Please feel free to ask questions

Thank You

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