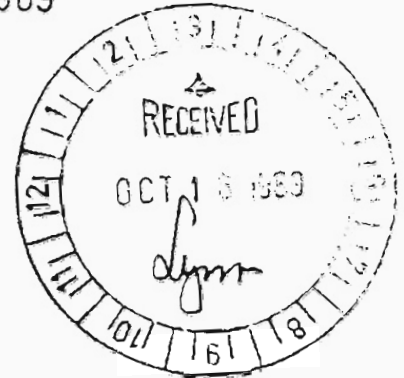




Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
LEFISINAN I MAGA LAHI
AGANA, GUAM 96910 USA

OCT 18 1989



The Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
Post Office Box CB-1
Agana, Guam 96910

Received by

J

Dear Mr. Speaker:

Transmitted herewith is Bill No. 551, which I have signed into law this date as
Public Law 20-103.

Sincerely,

Joseph F. Ada
JOSEPH F. ADA
Governor

Enclosure

200560



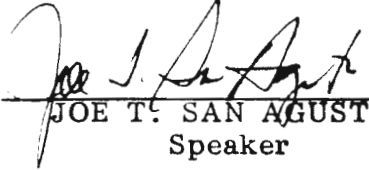
Commonwealth Now!

COPIED AT GOVERNMENT EXPENSE

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

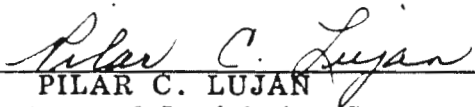
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 551 (COR), "A CONSUMER PROTECTION ACT TO ADD A NEW SECTION 6403 TO THE GOVERNMENT CODE TO PROHIBIT THE IMPORTATION OF CERTAIN COUNTERFEIT GOODS IN COMMERCIAL QUANTITIES, AND TO AMEND SECTION 6400 OF THE GOVERNMENT CODE TO TRANSFER REGISTRATION OF PATENTS, TRADEMARKS, AND COPYRIGHTS TO THE DEPARTMENT OF COMMERCE," was on the 28th day of September, 1989, duly and regularly passed.



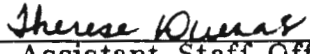
JOE T. SAN AGUSTIN
Speaker

Attested:



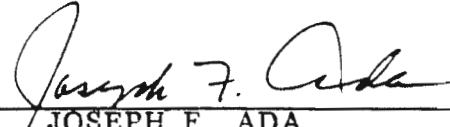
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 4th day of Oct., 1989,
at 4:20 o'clock p.m.



Therese Olivas
Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: October 16, 1989

Public Law No. 20-103

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 551 (COR)
As substituted by Committee on Energy,
Utilities and Consumer Protection and
further substituted by the Committee
on Rules

Introduced by:

D. Parkinson
T. S. Nelson
H. D. Dierking

J. P. Aguon
E. P. Arriola
M. Z. Bordallo
C. T. C. Gutierrez
P. C. Lujan
G. Mailloux
F. J. A. Quitugua
E. D. Reyes
J. T. San Agustin
F. R. Santos
J. G. Bamba
D. F. Brooks
E. R. Duenas
E. M. Espaldon
M. D. A. Manibusan
M. C. Ruth
T. V. C. Tanaka
A. R. Unpingco

A CONSUMER PROTECTION ACT TO ADD A
NEW SECTION 6403 TO THE GOVERNMENT
CODE TO PROHIBIT THE IMPORTATION OF
CERTAIN COUNTERFEIT GOODS IN
COMMERCIAL QUANTITIES, AND TO AMEND
SECTION 6400 OF THE GOVERNMENT CODE
TO TRANSFER REGISTRATION OF PATENTS,
TRADEMARKS, AND COPYRIGHTS TO THE
DEPARTMENT OF COMMERCE.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. A new Section 6403 is added to Title VI, Chapter V, of the
3 Government Code of Guam to read as follows:
4 "Section 6403. Counterfeit items.

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(a) Definitions:

1. Counterfeit item - a counterfeit item is defined as any item which violates or infringes any patent, trademark, or copyright which has been registered with the government of Guam in compliance with the provisions of this chapter. Any karat market gold item or item purporting to be gold which is underkarated by more than one (1) karat or which contains less than 95.83333% of the gold which the item is marked as containing, or which is falsely marked as being gold when it is not shall also be considered a counterfeit item.

2. Commercial Quantities - Commercial Quantities are defined as any of the following:

(i) More than eight (8) identical counterfeit items. If the items are identical except for size, they shall be considered the same item;

or

(ii) More than twenty-five (25) counterfeit items of a similar nature;

or

(iii) More than thirty-five (35) counterfeit items imported into Guam in any ninety (90) day period by the same person or company;

or

(iv) More than two (2) counterfeit items which, if genuine, would have a fair retail value in excess of Two Thousand Five Hundred Dollars (\$2,500);

or

(v) Counterfeit items in any quantity if the importer admits, or the documentation with the items reflects, that the counterfeit items are for resale.

(b) It shall be unlawful to import counterfeit goods into Guam in commercial quantities.

1 (c) During customs inspection at any port of entry into
2 Guam, or at any other time pursuant to search warrant, any
3 Guam Customs Officer or other peace officer may seize counterfeit
4 goods which have been imported into Guam or are otherwise in
5 Guam in commercial quantities only, if such officer has probable
6 cause to believe that the goods are counterfeit and are present in
7 commercial quantities.

8 (d) As to any seized items, a hearing officer appointed by
9 the Director of Commerce shall conduct a hearing not less than
10 fifteen (15) days nor more than thirty (30) days after the
11 seizure. The Director of Commerce may appoint himself to be the
12 hearing officer. The hearing shall be conducted pursuant to the
13 Administrative Adjudication Law except to the extent that such
14 Law is inconsistent with this section. In addition to any other
15 required notices, the person from whom the items are seized shall
16 be given notice of the time and place of the hearing at the time
17 of seizure.

18 Notice shall also be mailed to the holder of the copyright,
19 trademark, or patent or the holder's representative at the last
20 known address of such holder as recorded pursuant to the
21 provisions of this chapter. The said holder or such holder's full
22 time employee or his attorney may appear and participate as a
23 party in the hearing. The purpose of the hearing shall be to
24 determine:

25 1. Whether the search and seizure were properly
26 conducted.

27 2. Whether the items seized were counterfeit.

28 3. Whether the items seized were in commercial
29 quantities.

30 4. Whether the items were being imported for resale
31 and the appropriate penalties therefor.

32 The burden of proof shall be on the party claiming the items
33 are counterfeit, by a preponderance of the evidence. If, at the
34 hearing, the hearing officer finds, based on the evidence, that

1 the search and seizure were properly conducted; that the items
2 are counterfeit; and that the items being imported were being
3 imported in commercial quantities, then the hearing officer shall
4 order the confiscated items destroyed on a date certain at some
5 time after the appeal time to the Superior Court of Guam has
6 expired, pursuant to the Administrative Adjudication Law.
7 Otherwise, the hearing officer shall order the confiscated items
8 returned to the person from whom they were confiscated. In
9 addition, if the hearing officer determines by a preponderance of
10 the evidence that the counterfeit items were being imported for
11 resale in Guam, then the hearing officer shall impose a penalty
12 and fine against the person importing the items into the Guam
13 equal to three (3) times the retail value of the counterfeit items if
14 the counterfeit items were genuine. During any appeal, the items
15 seized shall be retained by the Director of Commerce.
16 Importation of more than one hundred (100) counterfeit items in
17 any ninety (90) day period or importation within a ninety (90)
18 day period of counterfeit items which if genuine would have a
19 total value of more than Ten Thousand Dollars (\$10,000) shall
20 give rise to a rebuttable presumption that such items were
21 imported into Guam for resale."

22 Section 2. Section 6400 of the Government Code of Guam is amended
23 to read as follows:

24 "Section 6400. Patents and copyrights: registration. The owner
25 of a patent, copyright, or trademark, who desires to register it in the
26 Territory of Guam, may do so by complying with the following
27 provisions:

28 (a) By supplying a certified copy of the United States
29 Registration of such patent, copyright, or trademark, to the
30 Director of Commerce.

31 (b) By paying to the Director of Commerce the sum of
32 twelve dollars and fifty cents (\$12.50) for the requisite recording
33 and advertising in Guam.

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(c) All registrants shall keep on file with the Director of Commerce their current mailing address, phone number, and the name, address, and phone number, of their representative on Guam (if any). It shall be the sole responsibility of the registrant to keep such information current.

(d) Guam Customs and the Department of Commerce shall have the authority to enforce laws, rules, and regulations regarding violations of copyrights, trademarks, and patents registered with the government of Guam.

(e) The Director of Commerce shall promulgate rules and regulations to implement this Chapter."

Section 3. All records, documents, reference materials relating to the registration of copyrights, trademarks, and patents and the registration thereof shall be transferred to the Director of Commerce by the Director of Administration within thirty (30) days of the effective date of this Act.

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

ROLL CALL SHEET

Bill No. 551

Date: 9/21/89

Resolution No. _____

QUESTION: _____

	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. P. Aguon	✓			
E. P. Arriola	✓			
J. G. Bamba	✓			
M. Z. Bordallo	✓			
D. F. Brooks	✓			
H. D. Dierking	✓			
E. R. Duenas				✓
E. M. Espaldon	✓			
C. T. C. Gutierrez	✓			
P. C. Lujan	✓			
G. Mailloux			✓	
M. D. A. Manibusan	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua				✓
E. D. Reyes	✓			
M. C. Ruth	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco	✓			

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TWENTIETH GUAM LEGISLATURE
1989 FIRST REGULAR SESSION

APR 10 '89

Bill No. 551

Introduced by:

Don Parkinson 

A Consumer Protection Act to add a new section 6403 to the Government Code of Guam to prohibit the importation of certain counterfeit goods in commercial quantities, and to amend Sections 6400 of the Government Code to transfer registration of patents, trademarks, and copyrights to the Department of Commerce, and for other purposes.

Be it enacted by the people of the Territory of Guam:

Section 1. A new Section 6403 is added to Title VI, Chapter V, of the Government Code of Guam, to read as follows:

"Section 6403. Counterfeit items:

a. Definitions:

1. Counterfeit item - a counterfeit item is defined as any item which violates or infringes any patent, trademark, or copyright which has been registered with the Government of Guam in compliance with the provisions of this chapter. Any Karat market gold item or item purporting to be gold which is underkarated by more than one karat or which contains less than 95.83333% of the gold which the item is marked as containing, or which is falsely marked as being gold when it is not shall also be considered a counterfeit item.

2. Commercial Quantities - Commercial Quantities are defined as any of the following:

(a) More than eight (8) identical counterfeit items. If the items are identical except for size, they shall be considered the same item.

or

(b) More than 25 counterfeit items of a similar nature.

or

(c) More than 35 counterfeit items imported into Guam in any 90 day period by the same person or company.

or

(d) Counterfeit item or counterfeit items which, if genuine, would have a fair retail value in excess of Two Thousand Five Hundred Dollars (\$2,500.00)

or

(e) Counterfeit items in any quantity if the importer admits, or the documentation with the items reflect, that the counterfeit items are for resale.

(b) It shall be unlawful to import counterfeit goods into the Territory of Guam in commercial quantities.

(c) During customs inspection at any port of entry into Guam, any Guam Customs Officer may seize counterfeit goods being imported into Guam in commercial quantities only, if he has probable cause to believe that the goods are counterfeit and are present in commercial quantities.

(d) As to any seized items, a hearing officer appointed by the Director of the Department of Commerce shall conduct a hearing not less than 15 days after the seizure nor more than 30 days after the seizure. The Director of Department of Commerce may appoint himself to be the hearing officer. The hearing shall be conducted pursuant to the administrative adjudication act except to the extent that such administrative adjudication act is inconsistent with this act. In addition to any other

required notices, the person from whom the items are seized shall be given notice of the time and place of the hearing at the time of seizure.

Notice shall also be mailed to the holder of the copyright, trademark, or patent or the holder's representative at the last known address of such holder as recorded pursuant to the provisions of this chapter. The said holder or his full time employee or his attorney may appear and participate as a party in the hearing. The purpose of the hearing shall be to determine:

- a. Whether the search and seizure was properly conducted.
- b. Whether the items seized were counterfeit.
- c. Whether the items seized were in commercial quantities.
- d. Whether the items were being imported for resale and the appropriate penalties therefore.

The burden of proof shall be on the party claiming the items are counterfeit, by a preponderance of the evidence. If, at the hearing, the hearing officer finds, based on the evidence, that the search and seizure was properly conducted; that the items are counterfeit; and that the items being imported were being imported in commercial quantities, then the hearing officer shall order the confiscated items destroyed on a date certain at some time after the appeal time to the Superior Court of Guam has expired, pursuant to the Administrative Adjudication Act. Otherwise, the hearing officer shall order the confiscated

items returned to the person from whom they were confiscated. In addition, if the hearing officer determines by a preponderance of the evidence that the counterfeit items were being imported for resale in the Territory of Guam, then the hearing officer shall impose a penalty and fine against the person importing the items into the Territory of Guam equal to three (3) times the retail value of the counterfeit items if the counterfeit items were genuine. During any appeal, the items seized shall be retained by the Director of Commerce. Importation of more than one hundred counterfeit items in any 90 day period or importation with a 90 day period of counterfeit items which if genuine would have a total value of more than ten thousand dollars (\$10,000.00) shall give rise to a rebuttable presumption that such items were imported into the Territory of Guam for resale."

Section 2. Section 6400 of the Government Code of Guam is amended to read as follows:

"Section 6400. Patents and copyrights: registration. The owner of a patent, copyright, or trademark, who desires to register it in the Territory of Guam, may do so by complying with the following provisions:

(a) By supplying a certified copy of the United States Registration of such patent, copyright, or trademark, to the Director of [Administration] the Department of Commerce.

(b) By paying to the Director of [Administration] the Department of Commerce the sum of twelve dollars and fifty

cents (\$12.50) for the requisite recording and advertising in Guam.

(c) All registrants shall keep on file with the Director of the Department of Commerce their current mailing address, phone number, and the name, address, and phone number of their representative on Guam (if any). It shall be the sole responsibility of the registrant to keep such information current.

(d) Guam Customs and the Department of Commerce shall have the authority to enforce laws, rules, and regulations regarding violations of copyrights, trademarks, and patents registered with the Government of Guam.

(e) The Director of the Department of Commerce shall promulgate rules and regulations to implement this Chapter."

Section 3. All records, documents, and reference materials relating to the registration of copyrights, trademarks, and patents and the registration thereof shall be transferred to the Director of the Department of Commerce by the Director of the Department of Administration within 30 days of the effective date of this act.

SENATOR DON PARKINSON
20th GUAM LEGISLATURE
163 CHALAN SANTO PAPA STREET
AGANA, GUAM 96910

MAJORITY LEADER and CHAIRPERSON, COMMITTEE ON ENERGY, UTILITIES, AND CONSUMER PROTECTION

Honorable Joe T. San Agustin
Speaker, 20th Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Energy, Utilities and Consumer Protection jointly with the Committee on Economic Development wishes to report out their findings on BILL NO. 551: A CONSUMER PROTECTION ACT TO ADD A NEW SECTION 6403 TO THE GOVERNEMENT CODE OF GUAM TO PROHIBIT THE IMPORTATION OF CERTAIN COUNTERFEIT GOODS IN COMMERCIAL QUANTITIES, AND TO AMEND SECTIONS 6400 OF THE GOVERNMENT CODE TO TRANSFER REGISTRATION OF PATENTS, TRADEMARKS, AND COPYRIGHTS TO THE DEPARTMENT OF COMMERCE, AND FOR OTHER PURPOSES.

Committee on Energy, Utilities
and Consumer Protection

Committee on Economic
Development

TO PASS: -10-

TO PASS: 12

NOT TO PASS: -0-

NOT TO PASS: 0

ABSTENTIONS: -0-

ABSTENTIONS: 0

REPORT OUT ONLY: -2-

REPORT OUT ONLY: 0

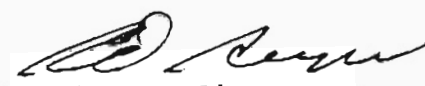
OFF-ISLAND: -1-

OFF-ISLAND: 0

A copy of the Committee Report and all pertinent documents are attached for your information.

Sincerely,

Sincerely,

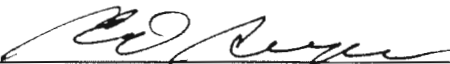
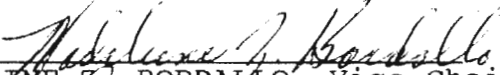

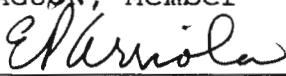
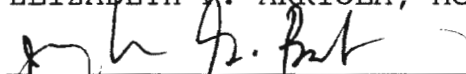
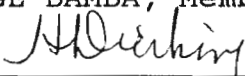
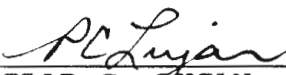
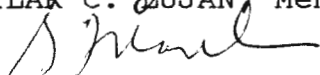






Senator Don Parkinson
Chairman, Committee on
Energy, Utilities and
Consumer Protection

Senator Eddie Reyes
Chairman, Committee on
Economic Development

COMMITTEE ON ECONOMIC DEVELOPMENT
TWENTIETH GUAM LEGISLATURE




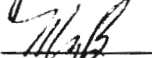



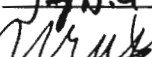
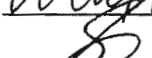


BILL NO. 551 - A CONSUMER PROTECTION ACT TO ADD A NEW SECTION 6403 TO THE GOVERNMENT CODE OF GUAM TO PROHIBIT THE IMPORTATION OF CERTAIN COUNTERFEIT GOODS IN COMMERCIAL QUANTITIES, AND TO AMEND SECTION 6400 OF THE GOVERNMENT CODE TO TRANSFER REGISTRATION OF PATENTS, TRADEMARKS AND COPYRIGHTS TO THE DEPARTMENT OF COMMERCE, AND FOR OTHER PURPOSES.

<u>COMMITTEE MEMBER</u>	<u>TO</u> <u>PASS</u>	<u>NOT TO</u> <u>PASS</u>	<u>REPORT</u> <u>OUT</u>	<u>INACTIVE</u> <u>FILE</u>	<u>OFF-</u> <u>ISLAND</u>
 EDWARD D. REYES, Chairman	✓				
 MADELEINE Z. BORDALLO, Vice-Chairman	✓				
 JOHN P. AGON, Member	✓				✓
 ELIZABETH R. ARRIOLA, Member	✓				
 J. GEORGE BAMBA, Member	✓				
 HERMINIA D. DIERKING, Member	✓				
 PILAR C. LUJAN, Member	✓				✓
 GORDON MAILLOUX, Member	✓				
 MARILYN MANIBUSAN, Member	✓				
 TED S. NELSON, Member	✓				
 JOE T. SAN AGUSTIN, Ex-Officio Member	✓				
 FRANCISCO R. SANTOS, Member	✓				

**COMMITTEE ON ENERGY, UTILITIES AND
CONSUMER PROTECTION**

VOTING SHEET ON:

**BILL NO. 551: A CONSUMER PROTECTION ACT TO ADD A NEW SECTION 6403
TO THE GOVERNMENT CODE OF GUAM TO PROHIBIT THE IMPORTATION OF CERTAIN
COUNTERFEIT GOODS IN COMMERCIAL QUANTITIES, AND TO AMEND SECTIONS
6400 OF THE GOVERNMENT CODE TO TRANSFER REGISTRATION OF PATENTS,
TRADEMARKS, AND COPYRIGHTS TO THE DEPARTMENT OF COMMERCE,
AND FOR OTHER PURPOSES.**

<u>COMMITTEE MEMBERS:</u>	<u>INITIAL</u>	<u>TO PASS:</u>	<u>NOT TO PASS:</u>	<u>REPORT OUT:</u>
Sen. Don Parkinson		✓		
Sen. Herminia Dierking		✓		
Sen. George Bamba		✓		
Sen. Madeleine Bordallo		✓		
Sen. Doris Brooks				
Sen. Gordon Mailloux		✓		
Sen. Marilyn Manibusan				✓ 8/10/89
Sen. Ted Nelson		✓		
Sen. Franklin Quitugua		✓		
Sen. Martha Ruth		✓ 8/4/89		
Sen. Frank Santos		✓		
Sen. Antonio Unpingco				✓ 8/14/89
Spkr. Joe T. San Agustin		✓		

jl(20-32/voting.doc)

**REPORT OF THE COMMITTEE ON ENERGY, UTILITIES
AND CONSUMER PROTECTION JOINTLY WITH THE
COMMITTEE ON ECONOMIC DEVELOPMENT ON BILL NO.
551: A CONSUMER PROTECTION ACT TO
ADD A NEW SECTION 6403 TO THE GOVERNMENT CODE
OF GUAM TO PROHIBIT THE IMPORTATION OF CERTAIN
COUNTERFEIT GOODS IN COMMERCIAL QUANTITIES,
AND TO AMEND SECTIONS 6400 OF THE GOVERNMENT
CODE TO TRANSFER REGISTRATION OF PATENTS,
TRADEMARKS, AND COPYRIGHTS TO THE DEPARTMENT
OF COMMERCE, AND FOR OTHER PURPOSES.**

PREFACE:

The Committee on Energy, Utilities and Consumer Protection with the Committee on Economic Development held a joint public hearing on Wednesday, April 26, 1989 at 9:30 a.m. in the Legislative Session Hall on BILL NO. 551: A CONSUMER PROTECTION ACT TO ADD A NEW SECTION 6403 TO THE GOVERNMENT CODE OF GUAM TO PROHIBIT THE IMPORTATION OF CERTAIN COUNTERFEIT GOODS IN COMMERCIAL QUANTITIES, AND TO AMEND SECTIONS 6400 OF THE GOVERNMENT CODE TO TRANSFER REGISTRAITON OF PATENTS, TRADEMARKS, AND COPYRIGHTS TO THE DEPARTMENT OF COMMERCE, AND FOR OTHER PURPOSES. The Committee members present at the public hearing were: Senator Don Parkinson, Chairman, CEUCP; Senator Edward Reyes, Chairman, CED; Senator Ted Nelson, member; Senator Martha Ruth, member; Senator Franklin Quitugua, member and Senator Doris Brooks, member.

TESTIMONY:

During the public hearing Mr. George Cruz, Department of Revenue and Taxation Representative appeared before the Committees to testify in favor of Bill No. 551. A brief information on Trademarks was submitted by Mr. Cruz. This is labeled Exhibit "A". This testimony provides information on the definition and functions of Trademarks and what applicants must do to import trademarks.

Questions were addressed to Mr. Cruz in regards to the importation of trademarks. Senator Ruth asked whether any counterfeit items have been seized by the Department and where are they being stored? Mr. Cruz responded that 'yes' the Department has seized counterfeit items and these items are being stored at the Department of Commerce Warehouse. Mr. Cruz stated that the Reeboks that have been seized are

difficult to distinguish between the real and fake ones. Senator Parkinson then emphasized that the Legislature's primary concern is with seizing counterfeit goods and nothing more.

Senator Reyes added that Reeboks is not licensed to do business in Guam, however, they are registered with the Department of Revenue and Taxation. Senator Reyes asked how much would it cost in order to enforce the seizing of counterfeit goods? Mr. Cruz responded that it would cost money to educate the employees in order to distinguish the difference between fake and real items.

Although the Department of Commerce was invited to attend the public hearing, no one appeared to testify nor was any written testimony submitted.

JOINT COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee on Energy, Utilities and Consumer Protection jointly with the Committee on Economic Development of the 20th Guam Legislature finds that the seizing and retaining of counterfeit items should be handled by the Department of Commerce instead of the Department of Administration. When counterfeit items are seized by the Department of Customs, a hearing is required in order to find out whether proper procedures were conducted during the seizure and whether the counterfeit items are actually counterfeit. In addition, to determine whether the counterfeit items being imported are for resale in Guam. Therefore, the Committee on Energy, Utilities and Consumer Protection jointly with the Committee on Economic Development recommend that Bill No. 551 be passed by the 20th Guam Legislature.

EXHIBITS:

- Exhibit "A" Trademark Information Booklet by the Department of Revenue and Taxation.
- Exhibit "B" Witness Sign In Sheet Displayed during the Public Hearing for Bill No. 551.

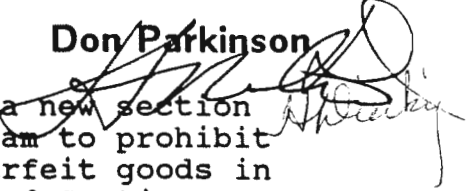
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TWENTIETH GUAM LEGISLATURE
1989 FIRST REGULAR SESSION

89 MAR 22 PM 3:45

Bill No. 551

Introduced by:

Don Parkinson 

A Consumer Protection Act to add a new section 6403 to the Government Code of Guam to prohibit the importation of certain counterfeit goods in commercial quantities, and to amend Sections 6400 of the Government Code to transfer registration of patents, trademarks, and copyrights to the Department of Commerce, and for other purposes.

Be it enacted by the people of the Territory of Guam:

Section 1. A new Section 6403 is added to Title VI, Chapter V, of the Government Code of Guam, to read as follows:

"Section 6403. Counterfeit items:

a. Definitions:

1. Counterfeit item - a counterfeit item is defined as any item which violates or infringes any patent, trademark, or copyright which has been registered with the Government of Guam in compliance with the provisions of this chapter. Any Karat market gold item or item purporting to be gold which is underkarated by more than one karat or which contains less than 95.83333% of the gold which the item is marked as containing, or which is falsely marked as being gold when it is not shall also be considered a counterfeit item.

2. Commercial Quantities - Commercial Quantities are defined as any of the following:

(a) More than eight (8) identical counterfeit items. If the items are identical except for size, they shall be considered the same item.

or

(b) More than 25 counterfeit items of a similar nature.

or

(c) More than 35 counterfeit items imported into Guam in any 90 day period by the same person or company.

or

(d) Counterfeit item or counterfeit items which, if genuine, would have a fair retail value in excess of Two Thousand Five Hundred Dollars (\$2,500.00)

or

(e) Counterfeit items in any quantity if the importer admits, or the documentation with the items reflect, that the counterfeit items are for resale.

(b) It shall be unlawful to import counterfeit goods into the Territory of Guam in commercial quantities.

(c) During customs inspection at any port of entry into Guam, any Guam Customs Officer may seize counterfeit goods being imported into Guam in commercial quantities only, if he has probable cause to believe that the goods are counterfeit and are present in commercial quantities.

(d) As to any seized items, a hearing officer appointed by the Director of the Department of Commerce shall conduct a hearing not less than 15 days after the seizure nor more than 30 days after the seizure. The Director of Department of Commerce may appoint himself to be the hearing officer. The hearing shall be conducted pursuant to the administrative adjudication act except to the extent that such administrative adjudication act is inconsistent with this act. In addition to any other

required notices, the person from whom the items are seized shall be given notice of the time and place of the hearing at the time of seizure.

Notice shall also be mailed to the holder of the copyright, trademark, or patent or the holder's representative at the last known address of such holder as recorded pursuant to the provisions of this chapter. The said holder or his full time employee or his attorney may appear and participate as a party in the hearing. The purpose of the hearing shall be to determine:

- a. Whether the search and seizure was properly conducted.
- b. Whether the items seized were counterfeit.
- c. Whether the items seized were in commercial quantities.
- d. Whether the items were being imported for resale and the appropriate penalties therefore.

The burden of proof shall be on the party claiming the items are counterfeit, by a preponderance of the evidence. If, at the hearing, the hearing officer finds, based on the evidence, that the search and seizure was properly conducted; that the items are counterfeit; and that the items being imported were being imported in commercial quantities, then the hearing officer shall order the confiscated items destroyed on a date certain at some time after the appeal time to the Superior Court of Guam has expired, pursuant to the Administrative Adjudication Act. Otherwise, the hearing officer shall order the confiscated

items returned to the person from whom they were confiscated. In addition, if the hearing officer determines by a preponderance of the evidence that the counterfeit items were being imported for resale in the Territory of Guam, then the hearing officer shall impose a penalty and fine against the person importing the items into the Territory of Guam equal to three (3) times the retail value of the counterfeit items if the counterfeit items were genuine. During any appeal, the items seized shall be retained by the Director of Commerce. Importation of more than one hundred counterfeit items in any 90 day period or importation with a 90 day period of counterfeit items which if genuine would have a total value of more than ten thousand dollars (\$10,000.00) shall give rise to a rebuttable presumption that such items were imported into the Territory of Guam for resale."

Section 2. Section 6400 of the Government Code of Guam is amended to read as follows:

"Section 6400. Patents and copyrights: registration. The owner of a patent, copyright, or trademark, who desires to register it in the Territory of Guam, may do so by complying with the following provisions:

(a) By supplying a certified copy of the United States Registration of such patent, copyright, or trademark, to the Director of [Administration] the Department of Commerce.

(b) By paying to the Director of [Administration] the Department of Commerce the sum of twelve dollars and fifty

cents (\$12.50) for the requisite recording and advertising in Guam.

(c) All registrants shall keep on file with the Director of the Department of Commerce their current mailing address, phone number, and the name, address, and phone number of their representative on Guam (if any). It shall be the sole responsibility of the registrant to keep such information current.

(d) Guam Customs and the Department of Commerce shall have the authority to enforce laws, rules, and regulations regarding violations of copyrights, trademarks, and patents registered with the Government of Guam.

(e) The Director of the Department of Commerce shall promulgate rules and regulations to implement this Chapter."

Section 3. All records, documents, and reference materials relating to the registration of copyrights, trademarks, and patents and the registration thereof shall be transferred to the Director of the Department of Commerce by the Director of the Department of Administration within 30 days of the effective date of this act.

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For File



General
Information
Concerning

TRADE MARKS

A brief introduction to Trademark
matters including:

- definition and functions
of Trademarks
- what applicants must do

**U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE**

Exhibit "A"

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Trademark Statutes and Rules

This pamphlet is intended to serve only as a general guide in regard to trademark matters in the Patent and Trademark Office.

Applications for registration of trademarks must conform to the requirements of the Trademark Act of 1946, as amended, and the Trademark Rules of Practice. This Act, Public Law 489, Seventy-ninth Congress, Chapter 540, 60 Stat. 427, popularly known as the Lanham Act, and forming Chapter 22, Title 15 of the U.S. Code, became effective July 5, 1947, superseding the Trademark Acts of 1905 and 1920. The trademark rules form Part 2 of Title 37 of the Code of Federal Regulations. Copies of trademark publications can be purchased from the Government Printing Office as indicated at the end of this pamphlet.

Definition and Functions of Trademarks

Definition of Trademarks. A "trademark," as defined in section 45 of the 1946 Act, "includes any word, name, symbol, or device, or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others."

Function of Trademarks. The primary function of a trademark is to indicate origin. However, trademarks also serve to guarantee the quality of the goods bearing the mark and, through advertising, serve to create and maintain a demand for the product. Rights in a trademark are acquired only by use and the use must ordinarily continue if the rights so acquired are to be preserved. Registration of a trademark in the Patent and Trademark Office does not in itself create or establish any exclusive rights, but is recognition by the Government of the right of the owner to use the mark in commerce to distinguish his goods from those of others.

Mark Must Be Used in Commerce. In order to be eligible for registration, a mark must be in use in commerce which may lawfully be regulated by Congress, for example, interstate commerce, at the time the application is filed. "Use in commerce" is defined in section 45 as follows:

For the purposes of this Act a mark shall be deemed to be used in commerce (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and the

goods are sold or transported in commerce and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith.

Trade and Commercial Names. Trademarks differ from trade and commercial names which are used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations or occupations, or the names or titles lawfully adopted by persons, firms, associations, companies, unions and other organizations. The latter are not subject to registration unless actually used as trademarks.

Registration of Trademarks

Marks Not Subject to Registration. A trademark cannot be registered if it—

(a) Consists of or comprises immoral, deceptive, or scandalous matter or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute.

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.

(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office or a mark or trade name previously used in the United States by another and not abandoned as to be likely when applied to the goods of another person, to cause confusion, or to cause mistake, or to deceive.

Principal and Supplemental Register Marks. The Trademark Act of 1946 provides for the establishment of two registers, designated as the Principal Register and the Supplemental Register. Coined, arbitrary, fanciful, or suggestive marks, generally referred to as "technical marks," may, if otherwise qualified, be registered on the Principal Register. Marks not qualified for registration on the principal register but which, nevertheless, are capable of distinguishing applicant's goods and have been in lawful use in commerce for at least one year, may be registered on the Supplemental Register.

Registrable Marks—Principal Register. A trademark, if otherwise eligible, may be registered on the Principal Register

unless it consists of a mark which, (1) when applied to the goods/services of the applicant is merely descriptive or deceptively mis-descriptive of them, or (2) when applied to the goods/services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin, or (3) is primarily merely a surname.

Such marks, however, may be registered on the Principal Register, provided they have become distinctive as applied to the applicant's goods in commerce. The Commissioner may accept as prima facie evidence that the mark has become distinctive as applied to applicant's goods/services in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the 5 years next preceding the date of filing of the application for registration.

Registrable Marks—Supplemental Register. All marks capable of distinguishing applicant's goods and not registrable on the Principal Register, which have been in lawful use in commerce for the year preceding the filing of the application for registration, may be registered on the Supplemental Register. For the purpose of registration on the Supplemental Register a mark may consist of any trademark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, or device, or any combination of any of the foregoing.

Application for Registration

The application for registration must be filed in the name of the owner of the mark. The owner may file and prosecute his own application for registration, or he may be represented by an attorney or other person authorized to practice in trademark cases. The Patent and Trademark Office cannot aid in the selection of an attorney or other person. Application forms for corporations, individuals, and firms are attached (see Centerfold).

Parts Comprising an Application. An application comprises:

- (a) A written application (see pp. 4 to 9);
- (b) A drawing of the mark (see p. 9);
- (c) Five specimens or facsimiles (see p. 11);
- (d) The required filing fee (see p. 18).

Foreign Applicant. In addition to the above requirements, if the applicant is not domiciled in the United States he must designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting

the mark and to whom all official communications will be addressed unless the applicant is represented by an attorney or other authorized person. If this document does not accompany or form part of the application, it will be required and registration refused unless it is supplied.

A foreign applicant using a mark in commerce which may lawfully be regulated by congress may apply for registration in the same manner as residents of the United States.

If the mark is not being used in commerce with the United States, the application may be based upon a registration which the applicant has previously secured in his country of origin, and which is in full force and effect. The application, however, must be accompanied by a certification or a certificate of the trademark office of the foreign country showing that the mark has been registered in that country. The U.S. application may also be based upon an application for registration filed in the applicant's country of origin not more than six months prior to the filing date of the application in this country, but registration will not be granted until the application filed in the country of origin has matured into a registration. In either case the application must conform to the same requirements as for other applications except that use in commerce which may lawfully be regulated by Congress need not be alleged and the dates of first use need not be given.

Compliance With Other Laws. When the sale or transportation of any product for which registration of a trademark is sought is regulated under an Act of Congress, the Office may, before allowance, make appropriate inquiry as to compliance with such act for the sole purpose of determining lawfulness of the commerce recited in the application.

THE WRITTEN APPLICATION

The written application must be in the English language and plainly written on but one side of the paper. Legal size paper, typewritten double spaced, with at least a 1 1/2-inch margin on the left-hand side and top of the pages is deemed preferable.

Requirements for Application. The application shall include a request for registration and must specify:

- (i) The name of the applicant;
- (ii) The citizenship of the applicant; if the applicant is a partnership, the names and citizenship of the general partners or, if the applicant is a corporation or association, the state or nation under the laws of which organized;
- (iii) The domicile and post office address of the applicant;
- (iv) That the applicant has adopted and is using the mark shown in the accompanying drawing;

(v) The particular goods on or in connection with which the mark is used;

(vi) The class of merchandise according to the official classification if known to the applicant. The official classification of goods and services appears on page 6;

(vii) The date of applicant's first use of the mark as a trademark on or in connection with goods specified in the application;

(viii) The date of applicant's first use of the mark as a trademark on or in connection with goods specified in the application in commerce which may lawfully be regulated by Congress, specifying the nature of such commerce;

(ix) The mode or manner in which the mark is used on or in connection with the particular goods specified.

If more than one item of goods is specified in the application, the dates of use required in paragraphs (vii) and (viii) of this section need be for only one of the items specified, provided the particular item to which the dates apply is designated. In combined applications, dates of use for each class are required.

The word "commerce" as used throughout this pamphlet means commerce which lawfully may be regulated by Congress as specified in Section 45 of the Trademark Act. The application must also include averments to the effect that the applicant or other person making the verification believes himself or the firm, corporation, or association in whose behalf he makes the verification, to be the owner of the mark sought to be registered; that the mark is in use in commerce specifying the nature of such commerce; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and that the facts set forth in the application are true.

Signature and Verification. The application must be signed and verified (sworn to) or include a declaration by the applicant or by a member of the firm or an officer of the corporation or association applying.

Use by Related Company. If the mark sought to be registered is not in fact being used by the applicant but is being used by one or more related companies whose use inures to the benefit of the applicant under section 5 of the Trademark Act, such facts must be indicated in the application.

Principal Register. All applications will be treated as requesting registration on the Principal Register unless otherwise stated in the application.

Supplemental Register. An application for registration on the Supplemental Register shall so indicate and shall specify that the

mark has been in continuous use in commerce, specifying the nature of such commerce, by the applicant for the preceding year, if the application is based on such use.

Classification. An application in which a single fee is submitted must be limited to the goods or to the services comprised in a single class. An application may be filed to register the same mark on goods and services falling within a plurality of classes but a fee equaling the sum of the fees for filing an application in each class is required. The following international classification of goods and services has been adopted for convenience of administration. This classification does not limit or extend the applicant's rights.

GOODS

1. Chemical products used in industry, science, photography, agriculture, horticulture, forestry; artificial and synthetic resins; plastics in the form of powders, liquids or pastes, for industrial use; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs, tanning substances; adhesive substances used in industry.
2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colouring matters, dyestuffs; mordants; natural resins; metals in foil and powder form for painters and decorators.
3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
4. Industrial oils and greases (other than oils and fats and essential oils); lubricants; dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers, night lights and wicks.
5. Pharmaceutical, veterinary, and sanitary substances; infants' and invalids' foods; plasters, material for bandaging; material for stopping teeth, dental wax, disinfectants; preparations for killing weeds and destroying vermin.
6. Unwrought and partly wrought common metals and their alloys; anchors, anvils, bells, rolled and cast building materials; rails and other metallic materials for railway tracks; chains (except driving chains for vehicles); cables and wires (non-electric); locksmiths' work; metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in non-precious metal not included in other classes; ores.
7. Machines and machine tools; motors (except for land vehicles); machine couplings and belting (except for land vehicles); large size agricultural implements; incubators.

8. Hand tools and instruments; cutlery, forks, and spoons; side arms.

9. Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), lifesaving and teaching apparatus and instruments; coin or counter-freed apparatus; talking machines; cash registers; calculating machines; fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary instruments and apparatus (including artificial limbs, eyes, and teeth).

11. Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosive substances; fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons); jewelry, precious stones, horological and other chronometric instruments.

15. Musical instruments (other than talking machines and wireless apparatus).

16. Paper, cardboard, articles of paper or of cardboard (not included in other classes); printed matter, newspapers and periodicals, books; book-binding material; photographs; stationery; adhesive materials (stationery); artists' materials; paint brushes; typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; printers' type and clichés (stereotype).

17. Gutta percha, indiarubber, balata and substitutes, articles made from these substances and not included in other classes; plastics in the form of sheets, blocks and rods, being for use in manufacture; materials for packing, stopping or insulating; asbestos, mica and their products; hose pipes (non-metallic).

18. Leather and imitations of leather, and articles made from these materials and not included in other classes; skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19. Building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; road-making materials; asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots.

20. Furniture, mirrors, picture frames; articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, substitutes for all these materials, or of plastics.

21. Small domestic utensils and containers (not of precious metals, or coated therewith); combs and sponges; brushes (other than

for cleaning purposes; steel wool; unworked or semi-worked glass (excluding glass used in building); glassware, porcelain and earthenware, not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks; padding and stuffing materials (hair, kapok, feathers, seaweed, etc.); raw fibrous textile materials.

23. Yarns, threads.

24. Tissues (piece goods); bed and table covers; textile articles not included in other classes.

25. Clothing, including boots, shoes and slippers.

26. Lace and embroidery, ribbons and braid; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting; linoleums and other materials for covering existing floors; wall hangings (non-textile).

28. Games and playthings; gymnastic and sporting articles (except clothing); ornaments and decorations for Christmas trees.

29. Meats, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products; edible oils and fats; preserves, pickles.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard, pepper, vinegar, sauces, spices; ice.

31. Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals, malt.

32. Beer, ale and porter; mineral and aerated waters and other non-alcoholic drinks; syrups and other preparations for making beverages.

33. Wines, spirits and liqueurs.

34. Tobacco, raw or manufactured; smokers' articles; matches.

SERVICES

35. Advertising and business.

36. Insurance and financial.

37. Construction and repair.

38. Communication.

39. Transportation and storage.

40. Material treatment.

41. Education and entertainment.

42. Miscellaneous.

Note: In the Trademark Search Room the prior U.S. classification numbers appear on registrations in addition to the international classification numbers.

Schedule for Certification Marks. In the case of certification marks, all goods and services are classified in two classes as follows:

A. Goods.

B. Services.

Schedule for Collective Membership Marks. All collective membership marks are classified as follows:

200 Collective Membership.

Use by Related Company. If the mark sought to be registered is not in fact being used by the applicant but is being used by one or more related companies whose use inures to the benefit of the applicant under section 5 of the Trademark Act, such facts must be indicated in the application.

DRAWING

The drawing must be a substantially exact representation of the mark as actually used in connection with the goods or services. The drawing of a service mark may be dispensed with if the mark is not capable of representation by a drawing, but in such case the written application must contain an adequate description of the mark.

If the application is for registration only of a word, letter or numeral, or any combination thereof, not depicted in special form, the drawing may be the mark typed in capital letters on paper, otherwise complying with the requirements.

Paper and Ink. The drawing must be made upon pure white durable paper, the surface of which must be calendered and smooth. A good grade of bond paper is suitable. India ink alone must be used for pen drawings to secure perfectly black solid lines. The use of white pigment to cover lines is not acceptable.

Size of Sheets and Margins. The size of the sheet on which a drawing is made must be 8 inches wide and 11 inches long. One of the shorter sides of the sheet should be regarded as its top. When the figure is longer than the width of the sheet, the sheet should be turned on its side with the top at the right. The size of the mark must be such as to leave a margin of at least one inch on the sides and bottom of the paper and at least one inch between it and the heading.

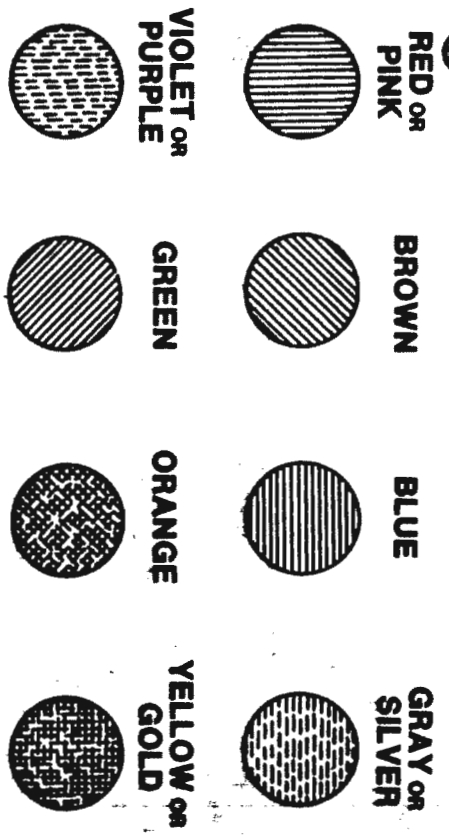
Heading. Across the top of the drawing, beginning one inch from the top edge and not exceeding one-fourth of the sheet, there must be placed a heading, listing in separate lines, applicant's name, applicant's post office address, the dates of first use, and the goods or

services recited in the application (or typical items of the goods or services if a number are recited in the application). This heading may be typewritten.

Character of Lines. All drawings, except as otherwise provided, must be made with the pen or by a process which will give them satisfactory reproduction characteristics. Every line and letter, names included, must be black. This direction applies to all lines, however fine, and to shading. All lines must be clean, sharp, and solid, and they must not be too fine or crowded. Surface shading, when used, should be open. A photolithographic reproduction or printer's proof copy may be used if otherwise suitable.

Extraneous Matter. Extraneous matter must not appear upon the face of the drawing.

Linings for Color. Where color is a feature of a mark, the color or colors employed may be designated in the drawing by means of conventional linings as shown in the following color chart.



Transmission of Drawings. Drawings transmitted to the Patent and Trademark Office, other than typed drawings, should be sent flat, protected by a sheet of heavy binder's board, or should be rolled for transmission in a suitable mailing tube.

Informal Drawings. A drawing not in conformity with the foregoing requirements may be accepted for purpose of examination, but the drawing must be corrected or a new one furnished, as required, before the mark can be published or the application allowed. Substitute drawings will not be accepted unless they have been required by the Examiner or correction of the original drawing would require that the mark be substantially entirely redrawn.

Trademark Specimens. A trademark may be placed in any manner on the goods, or their containers or displays associated therewith, or on tags or labels attached to the goods. The five specimens shall be duplicates of the actually used labels, tags, containers, or displays or portions thereof, when made of suitable material and capable of being arranged flat and of a size not larger than 8 1/2 x 13". Third-dimensional or bulky material submitted as specimens cannot be accepted, and the submission of such material may result in a delay in receiving a filing date.

Trademark Facsimiles. When, due to the mode of applying or affixing the mark to the goods, or to the manner of using the mark on the goods, or to the nature of the mark, specimens as above stated cannot be furnished, five copies of a suitable photograph or other acceptable reproduction, not larger than 8 1/2 x 13" and clearly and legibly showing the mark and all matter used in connection therewith, shall be furnished.

Service Mark Specimens or Facsimiles. In the case of a service mark, specimens or facsimiles of the mark as used in the sale or advertising of the services must be furnished unless impossible from the nature of the mark or the manner in which it is used, in which event some other representation acceptable to the Commissioner must be submitted.

In the case of service marks not used in printed or written form, three recordings will be accepted.

Examination of Applications

Order of Examination. Applications will be docketed and examined in the order in which they are received. In the event it is found that the mark is not entitled to registration for any reason, the applicant will be notified and advised of the reasons therefor and of any formal requirements or objections.

Period of Response. The applicant has 6 months from the date of mailing of any action by the Patent and Trademark Office to respond thereto. Failure to respond within this period will result in abandonment of the application. Response may be made with or without amendment and must include such proper action by the applicant as the nature of the action and the condition of the case may require.

Reexamination or Reconsideration. After response by the applicant, the application will be reexamined or reconsidered. If on

further examination or consideration, registration is refused, appeal may be taken to the Trademark Trial and Appeal Board.

Principal Register Marks Subject to Opposition. If, on examination or reexamination of an application for registration on the Principal Register, it appears that the applicant is entitled to have his mark registered, it will be published in the Official Gazette and will be subject to opposition. Any person who believes he would be damaged by the registration of a mark on the Principal Register may oppose the same within 30 days after publication. Oppositions are transmitted to the Trademark Trial and Appeal Board and are governed by the rules applicable to adversary proceedings.

Interference. An interference proceeding between conflicting marks in copending applications or in an application and registration will not be instituted except upon specific authorization of the Commissioner obtained upon petition by the applicant.

Registrations or applications to register on the Supplemental Register, registrations under the 1920 Act, and registrations of marks the right to the use of which has become incontestable are not subject to interference.

Allowance of Principal Register Marks. If no notice of opposition is filed and no conflict found with other pending applications or registrations, the certificate of registration will issue in due course of business.

Allowance of Supplemental Register Marks. A Supplemental register mark, upon being found allowable, will be passed to registration, and the mark published in the *Official Gazette* when registered.

Service, Certification, and Collective Marks

The Trademark Act of 1946 also provides for the registration of service marks, certification marks, and collective marks.

Service Marks. The term "service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

Certification Marks. The term "certification mark" means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that

bers of a union or other organization.

Collective Marks. The term "collective mark" means a trademark or service mark used by the members of a cooperative, an association, or other collective group or organization. Marks used to indicate membership in a union, an association, or other organization may be registered as Collective Membership Marks.

Registered Marks

Constructive Notice and Evidence of Ownership. Registration of a mark on the Principal Register of the 1946 Act, or under the Acts of 1881 or 1905, is constructive notice of the registrant's claim of ownership thereof, and prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein. Such registrations give the right to sue in the United States courts and to prevent importation of goods bearing an infringing mark.

Registration on the Supplemental Register of the 1946 Act or under the Act of 1920 does not constitute constructive notice or prima facie evidence and does not give the right to prevent importation of goods bearing an infringing mark, but does give the right to sue in the United States courts.

Notice of Registration. A registrant should give notice that his mark is registered by displaying with the mark as used the words "Registered in U.S. Patent and Trademark Office," or "Reg. U.S. Pat. and Tm. Off." or the letter R enclosed with a circle, thus ®. Use of such notice before the actual issuance of a certificate of registration for the mark is improper and may be the basis for refusal of registration.

PUBLICATION OF 1881 AND 1905 ACT REGISTRATIONS CLAIMING BENEFITS OF 1946 ACT (Sec. 12c)

Publication Requirements. A registrant of a mark registered under the provisions of the Acts of 1881 or 1905, who desires to secure the full benefits of the provisions of the Act of 1946, may at any time prior to the expiration of the period for which the registration was issued or renewed, upon the payment of the prescribed fee, file an affidavit or declaration setting forth those goods stated in the registration on which said mark is in use in commerce, specifying the nature of such commerce, and stating that the registrant claims the benefits of the Trademark Act of 1946. Publication of a

mark under the provisions of section 12 (c) does not extend the original term of the registration, and application for renewal must be made within the time specified in the statute. See Renewal (p. 154).

AFFIDAVIT OR DECLARATION OF USE (Sec. 8)

Cancellation for Failure to File Affidavit or Declaration During Sixth Year. Any registration issued under the provisions of the Act of 1946 and any 1881 or 1905 Act registration published to secure the full benefits of the 1946 Act, as described on page 13, will be cancelled at the end of 6 years following the date of registration or the date of publication unless within 1 year next preceding the expiration of such 6 years the registrant files in the Patent and Trademark Office an affidavit or declaration showing that said mark is in use in commerce or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

A notice of this requirement is attached to registration certificates issued under the provisions of the 1946 Act and is included in the notices of publication under section 12 (c).

The affidavit or declaration is not required in the case of 1881 and 1905 Act registrations which have not been published under section 12 (c), or 1920 Act registrations, even though such registrations have been renewed under the provisions of section 9. Such affidavits may be returned.

Requirements for Affidavit or Declaration. The affidavit or declaration must:

- (1) Be executed by the registrant after expiration of the 5-year period following the date of registration or publication under section 12 (c).
- (2) Identify the certificate of registration by the registration number and date of registration; and
- (3) State that the registered mark is in use in commerce and submit a specimen, facsimile or other evidence showing the mark as currently used, or recite facts to show that nonuse of the mark is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.
- (4) Include the required fee (see page 18).

AFFIDAVIT OR DECLARATION FOR INCONTESTABILITY (Sec. 15)

Incontestability Under Certain Conditions of Right to Use Mark. Under certain conditions, a mark registered on the Principal Register or a mark registered under the Acts of 1881 or 1905, and published under section 12 (c), may acquire an incontestable status, upon filing an affidavit or declaration conforming to the requirements indicated in the following paragraph. Marks which have acquired such status will not be subject to interference proceedings. Such marks, however, may be cancelled upon certain grounds specified by section 14 of the 1946 Act.

Requirements for Affidavit or Declaration for Incontestability. The affidavit or declaration provided by section 15 of the Act for acquiring incontestability for a mark registered on the Principal Register or a mark registered under the Act of 1881 or 1905 and published under section 12 (c) of the Act must:

- (a) Be signed by the registrant;
- (b) Identify the certificate of registration by the certificate number and date of registration;
- (c) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of 5 years subsequent to the date of registration or date of publication under section 12 (c) of the Act, and is still in use in commerce specifying the nature of such commerce;
- (d) Specify that there has been no final decision adverse to registrant's claim of ownership for such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register;
- (e) Specify that there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of;
- (f) Be filed within 1 year after the expiration of any such 5-year period.

RENEWAL

Term of Registrations. Registrations issued under the Act of 1946 remain in force for 20 years from the date of registration and may be renewed for periods of 20 years from the expiring period unless previously cancelled or surrendered.

Renewal Requirements. A registration may be renewed provided the mark is in use in commerce at the time the application for renewal is filed. However, if the mark is not in use in commerce, the registration will be eligible for renewal provided the nonuse is due

to special circumstances which excuse the nonuse and not due to any intention to abandon the mark. Registrations issued under the Acts of 1881 and 1905 remain in force for their unexpired terms and may be renewed in the same manner as registrations under the Act of 1946.

Renewal of Registrations Issued Under Act of 1920. Registrations under the Act of 1920 which were issued on or before January 5, 1928, expired on January 5, 1948, and such registrations issued after January 5, 1928, expire 20 years from the date of issue. Such registrations cannot be renewed unless renewal is required to support a foreign registration and in such case may be renewed on the Supplemental Register in the same manner as registrations under the Act of 1946.

Requirements of Application for Renewal. (a) The application for renewal must be verified or include a declaration by the registrant and set forth the goods or services recited in the registration on or in connection with which the mark is still in use in commerce, specifying the nature of such commerce. This statement must be executed not more than 6 months before the expiration of the registration or 3 months after and be accompanied by:

(1) A specimen or facsimile showing current use of the mark.

(2) The required fee, including the additional fee required in the case of a delayed application for renewal.

(b) The statement which is verified or supported by a declaration, the specimen or facsimile and the fee must be filed within the period prescribed for applying for renewal. If defective or insufficient, they cannot be completed after the period for applying for renewal has passed; if completed after the initial 6-month period has expired but before the expiration of the 3-month delay period, the application can be considered only as a delayed application for renewal.

(c) If the mark is not in use in commerce at the time of filing of the verified statement, facts must be recited to show that nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

The application for renewal must also include:

(1) If the applicant is not domiciled in the United States, the designation of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark.

(2) If the mark is registered under the Act of 1920, a showing which is verified or which includes a declaration by the applicant that renewal is required to support a foreign registration.

CORRECTION, DISCLAIMER, SURRENDER, ETC.

Provision is made in section 7 of the 1946 Act for the issuance, in case of a change of ownership of a registered mark, of a new certifi-

cate in the name of the assignee for the unexpired part of the original period; for the surrender of registrations, and for the amendment of registrations and disclaimer of registered marks, providing such amendment or disclaimer does not involve such changes as to alter materially the character of the mark. Mistakes in registrations incurred through the fault of the Office, or in good faith through fault of the applicant, may be corrected.

Request for such action must comply with rules 2.171-2.176 of the Trademark Rules of Practice. Except in the case of correction of an Office mistake, the request must be accompanied by the required fees. (See p. 18)

Cancellation. After a mark has been registered, any person who believes that he is or will be damaged by the registration may, upon payment of the required fee (see p. 18) and compliance with the provisions of the statute and rules, apply to the Commissioner of Patents and Trademarks to cancel the registration.

Assignment of Marks. A registered mark or a mark for which application to register has been filed may be assigned with the good will of the business or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignments must be by instruments in writing duly executed. Acknowledgement is prima facie evidence of the execution of an assignment and when recorded in the Patent and Trademark Office the record is prima facie evidence of execution.

Registration in Foreign Countries

Owners of trademarks having business or prospective business in foreign countries who desire to protect their marks in such foreign countries should ascertain the nature of the trademark laws in those countries in order that they may take proper steps in time to protect their rights.

In many foreign countries a resident there may obtain a registration of a trademark without having actually used it in trade, and such a registration may be used to prevent the importation into that country of goods bearing the mark.

To effect registration in many foreign countries, it is essential that registration be effective in the United States. Having secured registration domestically the owner frequently may secure registration in foreign countries before actually using the mark there. Duration of certificates of registration in foreign countries varies in accordance with the domestic laws of such countries.

General Information

Correspondence With the Patent and Trademark Office.

All letters should be addressed to "The Commissioner of Patents and Trademarks, Washington, D.C., 20231." When appropriate, a letter may be marked for the attention of a particular officer or individual.

Letters of Inquiry. A separate letter should, in every instance, be written in relation to each distinct subject of inquiry.

The Patent and Trademark Office cannot undertake to respond to inquiries whether certain trademarks have been registered, or, if so, to whom, or for what goods; nor can it give legal advice as to the registrability of a specified mark or the nature and extent of protection afforded by the law, except as questions may arise in connection with pending applications. Information of a general nature may be furnished either by answering the inquiry or by providing or calling attention to an appropriate publication.

Identification of Pending Applications and Registrations.

A letter relating to a pending application should identify it by the name of the applicant and serial number and filing date of the application. A letter relating to a registered trademark should identify it by the name of the registrant and by the number and date of the certificate.

Business Must be Conducted With Decorum and Courtesy.

Applicants and their representatives will be required to conduct their business with the Patent and Trademark Office with decorum and courtesy. Papers presented in violation of this requirement will be submitted to the Commissioner and will be returned by his direct order.

Fees and Payment of Money. The following is a partial schedule of fees and charges to be paid to the Patent and Trademark Office in connection with trademark matters. A complete schedule appears in the Trademark Rules of Practice.

(1) Application to register in each class	\$175.00
(2) Renewal application in each class	300.00
(3) Renewal application filed after date of expiration, an additional	100.00
(4) Notice of claim of benefits for a registration under prior act (sec. 12 (c))	100.00
(5) Appeal to Trademark Trial and Appeal Board from refusal of registration by an Examiner in each class	100.00
(6) Opposition or cancellation filing fee in each class	200.00
(7) Amendment of Registration, correction of applicant's mistake, disclaimer, or new certificate in name of assignee (sec. 7)	100.00
(8) Printed copy of registration only, \$1.00; copy with data as of date of mailing relating to renewal, cancellation, (12 (c))	

publication, and affidavits under sections 8 and 15

Omitting title	6.50
Showing title	6.50
(9) Certification of trademark records, per certificate	3.50
(10) Photocopies or other reproduction of records, drawings, or printed material, per page of material copied30
(11) For recording every assignment, agreement, or other paper re- lating to the property in a registration or application	100.00
(12) For indexing each additional item (where the recorded docu- ment relates to more than one application or registration)	20.00
(13) Affidavit under sec. 8, for each class	100.00
(14) Affidavit under sec. 15, for each class	100.00
(15) Combined affidavit under secs. 8 and 15, per class	200.00
(16) Petitions to the Commissioner	100.00

Method of Payment. All payments of money for Patent and Trademark Office fees should be made in United States specie, Treasury Notes, national bank notes, post office money orders, or certified checks. If sent in any other form, the Office may delay or cancel the credit until collection is made. Money orders and certified checks must be made payable to the Commissioner of Patents and Trademarks. Remittances made from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent by mail to Patent and Trademark Office will be at the risk of the sender; letters containing money should be registered.

Refunds. Money paid by actual mistake or in excess, such as a payment not required by law, will be refunded, but a mere change of purpose after payment of money, as when a party desires to withdraw his application for the registration of a mark or to withdraw an appeal, will not entitle a party to demand such a return. Amounts of \$1.00 or less will not be returned unless specifically demanded within a reasonable time, nor will the payer be notified of such amount.

RECORDS AND PUBLICATIONS OF THE PATENT AND TRADEMARK OFFICE

Digest of Registered Marks. A digest of registered marks is maintained in the search library of Trademark Examining Operations and is open to the public. This digest comprises a set of the registered word marks arranged alphabetically and a set of registrations comprising symbols, birds, animals, etc., arranged according to the classification of the goods or services with which they are used. It is advisable to search this digest before adopting a trademark so as to avoid possible conflict with previously registered marks. The Office

has reference material on articles of commerce indicating their classification in the various classes of goods which have been established under the law. (See p. 6.)

Printed Copies of Registrations. Printed copies of registrations will be furnished by the Patent and Trademark Office upon payment of the fee therefor. These copies may be merely copies of the registration as issued or status copy showing all effective actions taken on the registrations, including renewal affidavits, publication under section 12 (c), cancellation, etc.

Registration Files. After a mark has been registered or published for opposition, the file of the application and all proceedings relating thereto are available for public inspection and copies of the papers may be furnished upon paying the fee therefor.

Pending Applications. A digest of pending applications with a reproduction of the mark, the name and address of the applicant, the goods or services with which the mark is used, the dates of first use, and the serial number of the application is maintained for public inspection. Access to the file of a particular pending trademark application will be permitted prior to publication upon written request. Decisions of the Trademark Trial and Appeal Board in applications and proceedings relating thereto are published or available for inspection or publication.

Assignment Records. The assignment records of the Patent and Trademark Office are open to public inspection and copies of any recorded assignment may be obtained upon payment of the fee therefor. An order for a copy of an assignment should give the liber (book) and page or the reel and frame of the record.

Official Gazette. The *Official Gazette of the Patent Office* is published weekly and the Trademark Section contains information relating to trademarks, including marks published for opposition, marks registered, amended, cancelled and renewed, and marks published under section 12 (c) of the 1946 Act.

Single copies and subscriptions of the *Official Gazette* are sold by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402. The trademark material is reprinted separately as the Trademark Section and may be purchased or subscribed to separately.

Annual Trademark Index. An annual index of registrants of trademarks is published and sold by the Superintendent of Documents.

Trademark Rules. A copy of the Patent and Trademark Office's trademark rules may be obtained by ordering the following publication from the Superintendent of Documents:

Title 37 of the Code of Federal Regulations, which includes patent and copyright rules as well as trademark rules (May 1983 price, \$6.50 in the U.S.).

Trademark Manual of Examining Procedure. This publication sold by the Superintendent of Documents gives detailed guidance concerning trademark procedures. It contains instructions both for the Office's trademark examining attorneys and for the public (May 1983 price, \$24.00 in the U.S.).

Forms

Three forms are inserted for use by applicant. Applicant may select appropriate form which may be duplicated and submitted to the Patent and Trademark Office along with the fee and other requirements.

SENATOR DON PARKINSON
20th GUAM LEGISLATURE
163 CHALAN SANTO PAPA STREET
AGANA, GUAM 96910

MAJORITY LEADER and CHAIRPERSON, COMMITTEE ON ENERGY, UTILITIES, AND CONSUMER PROTECTION

WITNESS SIGN-IN SHEET

DATE: Wednesday, April 26, 1989

TIME: 9:30 a.m.

PLACE: Session Hall

RE: BILL #551: A CONSUMER PROTECTION ACT TO ADD A NEW SECTION 6403 TO THE GOVERNMENT CODE OF GUAM TO PROHIBIT THE IMPORTATION OF CERTAIN COUNTERFEIT GOODS IN COMMERCIAL QUANTITIES, AND TO AMEND SECTIONS 6400 OF THE GOVERNMENT CODE TO TRANSFER REGISTRATION OF PATENTS, TRADEMARKS, AND COPYRIGHTS TO THE DEPARTMENT OF COMMERCE, AND FOR OTHER PURPOSES.

<u>NAME:</u>	<u>DEPT/AGENCY:</u>	<u>ORAL/WRITTEN:</u>	<u>FOR/AGAINST</u>
<u>George V Cruz</u>	<u>Rev & Tax Licenses/Regis</u>	<u>oral</u>	<u>1</u>
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Exhibit "B"