



Office of the Governor of Guam

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Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

29 MAR 2004

Honorable Vicente C. Pangelinan
Speaker
I Mina Bente Siete na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96932

Office of the People's Speaker
Vicente (ben) C. Pangelinan

MAR 30 2004

TIME: 9:05 AM (JPM)
RECEIVED BY: *clj*

Dear Mr. Speaker:

Transmitted herewith is Bill No. 210, **AN ACT TO ADD A NEW CHAPTER 47 TO TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO CREATING CRIMINAL PENALTIES FOR THE COUNTERFEITING OF TRADEMARKS, TRADENAMES, SERVICE MARKS, LABELS, AND PRINTS WITHIN GUAM; AND TO AMEND §73102 OF TITLE 5, GUAM CODE ANNOTATED** which I have signed into law on March 10, 2004 as Public Law 27-72.

I applaud *I Mina Bente Siete na Liheslaturan Guåhan* unanimous passage of Senator John Quinata's bill to crack down on counterfeiting. The enactment of *The Trademark Counterfeiting Act of 2004* sends a strong message to traffickers that the devaluation of products will not be tolerated. Many in our community continue to express their dismay and concern over the negative impact this "Black Market" trade has on our visitor industry, the economy, investor confidence and, ultimately, our workforce.

This legislation is an important start for battling against the importation of counterfeit trademark merchandise. This Administration would like to see a tougher measure – one similar to the bill as originally introduced with many of the changes suggested by those who participated in Bill 210's public hearing on January 8, 2004. I suggest that *I Liheslaturan Guåhan* amend Public Law 27-72 as follows:

- Amend subsection 47.10. Definitions. Rather than employing the term and definition of "cumulative retail sale value" of counterfeit goods or services, I recommend that we keep the original language defining "retail sale value" as the "value equivalent to the retail price or fair market value". This would allow for a stiffer fine and would provide more force and effect in its intent to deter counterfeit smuggling.

- Implement penalties for the crime of counterfeit trademark trafficking such as imprisonment and fines that were found in the original language of the bill or recommended by citizens at the public hearing. The removal of these penalties and fines weakens the intent and title of this bill to warrant it ineffective. The fines and imprisonment guidelines as initially written would provide greater deterrence to smugglers and provide a funding source for the enforcement of this mandate.
- The original language of the bill provided a funding source for the Customs and Quarantine Agency to procure, retain and revamp resources needed to carry out this important mandate. With adequate funding, the Customs and Quarantine Agency would be able to train and recruit officers and other necessary resources to enforce this measure.
- The original bill contained language that provided for the examination of baggage. This section was added to the original bill as presented at the initial public hearing with the intent of correcting old local customs regulations and to clarify customs officers border inspection authority as defined in the Ninth Circuit Court of Appeals case, *United States v. Vance*. I encourage *I Liheslaturan Guåhan* to reconsider its decision to keep this section out of the bill.

I am confident that with these changes we will yield greater enforcement capabilities that will serve as a deterrent against illegal counterfeiting and trafficking activities. These actions strengthen our image as a world-class resort destination and reduce the propensity for black market traders to increasingly impact businesses legally operating on island.

Sins eru yan Magåhet,



FELIX P. CAMACHO

I Maga' låhen Guåhan

Governor of Guam

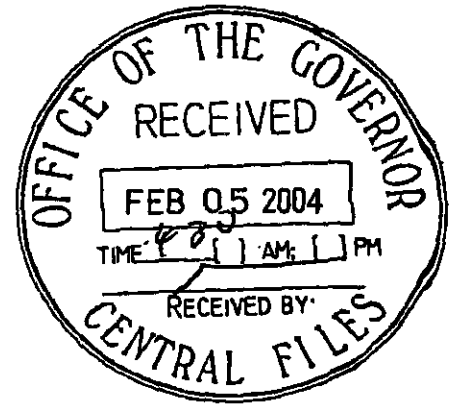
cc: Senator Tina Muna Barnes
Legislative Secretary



MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
TWENTY-SEVENTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

February 5, 2004

The Honorable Felix P. Camacho
I Maga'lahaen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910



Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill Nos. 108(COR), 207(COR), 221(COR) and 232(COR), and Substitute Bill Nos. 9(COR), 71(LS), 93(COR), 151(COR), 167(LS), 180(LS), 196(COR) and 210(COR) which were passed by *I Mina' Bente Siete Na Liheslaturan Guåhan* on February 4, 2004.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Rose Muña Barnes".

TINA ROSE MUÑA BARNES
Legislative Secretary

Enclosures (12)


I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2004 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 210 (COR), "AN ACT TO ADD A NEW CHAPTER 47 TO TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO CREATING CRIMINAL PENALTIES FOR THE COUNTERFEITING OF TRADEMARKS, TRADENAMES, SERVICE MARKS, LABELS, AND PRINTS WITHIN GUAM; AND TO AMEND §73102 OF TITLE 5, GUAM CODE ANNOTATED," was on the 4th day of February, 2004, duly and regularly passed.

vicente (ben) c. pangelinan
Speaker

Attested:



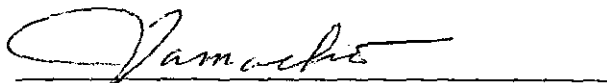
Tina Rose Muña Barnes
Senator and Legislative Secretary

This Act was received by I Maga'lahaen Guåhan this 5 day of February, 2004, at 4³⁰ o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: 2/10/04

Public Law No. 27-72

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session

Bill No. 210 (COR)

As amended by the Author and further
amended by the Committee on Public
Safety and Tourism, and further
substituted and amended on the Floor.

Introduced by:

J. M. Quinata
F. B. Aguon, Jr.
R. J. Respicio
J. M.S. Brown
F. R. Cunliffe
C. Fernandez
Mark Forbes
L. F. Kasperbauer
R. Klitzkie
L. A. Leon Guerrero
J. A. Lujan
T. R. Muña Barnes
v. c. pangelinan
Toni Sanford
Ray Tenorio

**AN ACT TO ADD A NEW CHAPTER 47 TO TITLE 9, GUAM
CODE ANNOTATED, RELATIVE TO CREATING
CRIMINAL PENALTIES FOR THE COUNTERFEITING OF
TRADEMARKS, TRADENAMES, SERVICE MARKS,
LABELS, AND PRINTS WITHIN GUAM; AND TO AMEND
§73102 OF TITLE 5, GUAM CODE ANNOTATED.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Title.** This Act may be cited as "*The Trademark Counterfeiting*
3 *Act of 2004.*"

4 **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
5 that there is an alarming epidemic of commercial counterfeiting activities in
6 Guam involving forging and counterfeiting of private labels and possession of
7 counterfeit articles. Such activities negatively affect trade and commerce
8 within Guam, encourages consumer fraud, and diminishes much needed
9 revenue for the people of Guam. Effective deterrence of such activities calls
10 for specific penalties for those persons who intentionally produce and traffic
11 in counterfeit goods knowing them to be counterfeit.

12 From the time Guam was ceded to the United States by the Treaty of
13 Paris signed in 1898 (30 Stat. 1754) to the enactment of the Organic Act in
14 1950, Guam was under the control of the Department of the Navy (E.O. 108-A,
15 signed by President William McKinley on December 23, 1898). The present
16 status of Guam is that of an unincorporated territory of the United States (48
17 USC 1421(a)). Guam is not, however, within the Customs Territory of the
18 United States (19 USC 1401(h); General Headnote 2, T.S.U.S., 19 USC 1202).
19 Thus the United States Customs laws and regulations have no effect in Guam
20 and United States Customs Officers in Guam would have no authority under
21 these laws. While there is no specific provision in the Organic Act for the
22 performance of customs functions, this Act will provide implied authority
23 over enforcement and expand domestic penalties for counterfeiting and
24 trafficking of commodities with illegal trademarks or private labels. A
25 Memorandum of Understanding between the Customs and Quarantine

1 Agency and the United States Customs Service empowers Guam Customs
2 Officers as collaborators functioning as deputized United States Customs
3 Officers in the enforcement of Federal customs, trademark, counterfeiting, and
4 trade laws.

5 The purpose of this Act is to define what constitutes criminal activity, to
6 provide for appropriate punishment for violation of the Act, and to broaden
7 the scope of authority of local Customs Officers to seize counterfeit items
8 entering our borders.

9 Section 3. A new Chapter 47 is hereby *added* to Title 9, Guam Code
10 Annotated, as follows:

11 **"Chapter 47**

12 **Trademark Counterfeiting Act**

- 13 §47.10 Definitions.
- 14 §47.20 Counterfeiting of Registered Trademarks.
- 15 §47.30 Trafficking of Counterfeited Goods.
- 16 §47.40 Aiding and Abetting the Trafficking of Counterfeit
17 Goods.
- 18 §47.50 Defenses, Affirmative Defenses, and Limitations on
19 Remedies.
- 20 §47.60 Enforcement.
- 21 §47.70 Restitution.
- 22 §47.80 Protection for Landlords.

1 §47.10. Definitions. For purposes of the Trademark Counterfeiting Act,

2 (a) the term '*registered mark*' means:

3 (1) a trademark or trade name registered in the United
4 States and Trademark Office, or in any State,
5 Commonwealth or Territory of the United States, or
6 registered in Guam pursuant to §20401 *et. seq.* of Title
7 5, Guam Code Annotated, or in any other country, or
8 protected by the *Amateur Sports Act of 1978*, 36 U.S.C.
9 §380, or recognized by common law, whether or not
10 the defendant knew such trademark or trade name
11 was so registered or protected; and

12 (2) used without the consent of the registrant;

13 (b) the term '*counterfeit mark*' means:

14 (1) a spurious mark,

15 (i) that is used in connection with trafficking goods
16 or services;

17 (ii) that is identical with, or substantially
18 indistinguishable from, a mark registered for
19 those goods or services on the principal register
20 in the United States Patent and Trademark Office
21 or registered with the Administrator of the
22 Guam Economic Development and Commerce
23 Authority ('GEDCA') and with the Department
24 of Revenue and Taxation of the government of
25 Guam, or in any other State, Commonwealth or

1 Territory of the United States, whether or not the
2 defendant knew such mark was so registered;
3 and

4 (iii) the use of which is likely to cause confusion, to
5 cause mistake, or to deceive; or

6 (2) a spurious designation that is identical with, or
7 substantially indistinguishable from, a designation as
8 to which the remedies of the *Lanham Act* are made
9 available, but such term does not include any mark or
10 designation used in connection with goods or services
11 of which the manufacture or production in question
12 authorized to use the mark or designation for the type
13 of goods or services so manufactured or produced, by
14 the holder of the right to use such mark or designation;

15 (c) the term '*traffic*' means to transport, transfer, or otherwise
16 dispose of, to another, in consideration for anything of value,
17 or to make or obtain control of, with the intent to transport,
18 transfer, or dispose of;

19 (d) the term '*Lanham Act*' means the Act entitled '*An Act To*
20 *Provide For The Registration And Protection Of Trademarks Used*
21 *In Commerce, To Carry Out The Provisions Of Certain*
22 *International Conventions, And For Other Purposes,*' approved
23 July 5, 1946 (15 U.S.C. §1051 *et. seq.*);

1 (e) the term '*cumulative retail sale value*' of counterfeit goods or
2 services means a value equivalent to the cumulative price or
3 fair market value of the article as of the time of the crime.

4 **§47.20. Counterfeiting of Registered Trademarks.** Whoever
5 intentionally and knowingly reproduces, counterfeits, copies, or
6 colorably imitates a registered mark and applies such reproduction,
7 counterfeit, copy, or colorable imitation to labels, signs, prints, packages,
8 wrappers, receptacles or advertisements, to be specifically used in
9 commerce upon, or in connection with the sale, offering for sale,
10 distribution, or advertising of goods or services or in connection with
11 such use, shall be guilty of the crime of counterfeiting. The crime of
12 counterfeiting shall be punishable as follows:

13 (a) **Misdemeanor.** A person shall be convicted of a
14 misdemeanor if the goods or services to which the forged or
15 counterfeit trademarks or service marks are attached,
16 affixed, or used in connection with, or to which the
17 defendant intended they be attached, affixed, or used in
18 connection with, have a cumulative retail sale value of Five
19 Hundred Dollars (\$500) or less.

20 (b) **Third Degree Felony.** A person shall be convicted of a third
21 degree felony if the goods or services to which the forged or
22 counterfeit trademarks or service marks are attached,
23 affixed, or used in connection with, or to which the
24 defendant intended they be attached, affixed, or used in
25 connection with, have a cumulative retail sale value in

1 excess of Five Hundred Dollars (\$500) but less than One-
2 Thousand Five Hundred Dollars (\$1,500).

3 (c) **Second Degree Felony.** A person shall be convicted of a
4 second degree felony if the goods or services to which the
5 forged or counterfeit trademarks or service marks are
6 attached, affixed, or used in connection with, or to which the
7 defendant intended they be attached, affixed, or used in
8 connection with, have a cumulative retail sale value of One
9 Thousand Five Hundred Dollars (\$1,500) or more.

10 **§47.30. Trafficking of Counterfeit Goods.** Whoever intentionally and
11 knowingly transports, transfers, or otherwise disposes of counterfeit
12 goods to another, in consideration for anything of value, or makes or
13 obtains control of counterfeit goods with intent to transport, transfer, or
14 dispose of such goods, shall be guilty of the crime of trafficking of
15 counterfeit goods. Goods bearing a counterfeit mark in the possession
16 of a person who intends personal use and not resale are permitted. The
17 crime of trafficking of counterfeit goods shall be punishable as follows:

18 (a) **Misdemeanor.** A person shall be found guilty of a
19 misdemeanor if the trafficked goods or services to which the
20 forged or counterfeit trademarks or service marks are attached,
21 affixed, or used in connection with, or to which the defendant
22 intended they be attached, affixed, or used in connection with,
23 have a cumulative retail sale value of Five Hundred Dollars (\$500)
24 or less.

1 (b) **Third Degree Felony.** A person shall be guilty of a third
2 degree felony if the trafficked goods or services to which the
3 forged or counterfeit trademarks or service marks are attached,
4 affixed, or used in connection with, or to which the defendant
5 intended they be attached, affixed, or used in connection with,
6 have a cumulative retail sale value in excess of Five Hundred
7 Dollars (\$500) but less than One Thousand Five Hundred Dollars
8 (\$1,500).

9 (c) **Second Degree Felony.** A person shall be guilty of a
10 second degree felony if the trafficked goods or services to which
11 the forged or counterfeit trademarks or service marks are attached,
12 affixed, or used in connection with, or to which the defendant
13 intended they be attached, affixed, or used in connection with,
14 have a cumulative retail sale value of One Thousand Five
15 Hundred Dollars (\$1,500) or more.

16 **§47.40. Aiding and Abetting the Trafficking of Counterfeit Goods.** A
17 person is guilty of aiding or abetting the trafficking of counterfeit goods
18 who:

- 19 (1) solicits a person to purchase counterfeit goods; or
- 20 (2) knowingly and for the purpose of trafficking of counterfeit
21 goods, transports any person into, out of or within Guam, or
22 who procures or pays for the transportation of any person
23 into, out of or within Guam for the purpose of trafficking
24 counterfeit goods.

1 **§47.50. Defenses, Affirmative Defenses, and Limitations on Remedies.**

2 All defenses, affirmative defenses, and limitations on remedies that
3 would be applicable in an action under the *Lanham Act*, (15 U.S.C. §1051
4 *et seq.*), shall be applicable in a prosecution under this Chapter.

5 **§47.60. Enforcement.** (a) Except as otherwise provided in this
6 Chapter, any goods to which a forged or counterfeit trademark or
7 service mark is attached or affixed, or any tools or other reproduction
8 materials for the reproduction of any specific forged or counterfeit
9 trademark or service mark, which are produced or possessed in
10 violation of this Chapter shall be seized by any law enforcement officer.
11 Upon a determination by a preponderance of the evidence that any
12 articles in the possession of the defendant in a prosecution under this
13 Chapter bears a counterfeit mark, the Attorney General may obtain an
14 order from the Court for the destruction of the counterfeit goods, unless
15 the owner of the registered or protected trademark or service mark
16 which has been forged or counterfeit approves a different disposition.

17 (b) Any personal property, including, but not limited to, cash, currency
18 or monies received by or in connection with a violation of this Chapter,
19 or any item, object, tool, machine, or vehicle of any kind, employed as
20 an instrumentality in the commission of, or in aiding or abetting in the
21 commission of the crime counterfeiting, trafficking in counterfeit goods,
22 or any other violation of this Chapter, may be seized and is subject to
23 forfeiture by the Courts of Guam.

24 **§47.70. Restitution.** In addition to any punishment ordered under
25 §§47.20, 47.30 and 47.40, the Court shall order any person found in

1 violation of this Chapter to make restitution to the government of Guam
2 or to the Customs and Quarantine Agency, as the case may be, for the
3 cost of storage and destruction of the counterfeit or forged goods. Such
4 person shall be jointly and severally liable for any restitution.

5 **§47.80. Protection for Landlords.** No owner, officer, employee, or agent
6 who provides, rents, leases, licenses, or sells real property upon which a
7 violation of §47.20 or §47.30 occurs, and who is charged with a violation
8 of §47.40, shall be subject to criminal penalty under this Chapter unless
9 he or she is proven to have actual knowledge that the mark is
10 counterfeit and is either a principal to the offense or an accessory.”

11 **Section 4.** Section 73102 of Chapter 73 of Title 5, of the Guam Code
12 Annotated is hereby *amended*, as follows:

13 “§73102. **Powers of Customs Officers.**

14 Any Customs Officer may:

- 15 (1) arrest persons who violate a prohibition contained in Article
16 6 of Title 9 GCA Chapter 67;
- 17 (2) make seizures of any controlled substance imported into
18 Guam in violation of Article 6 of Title 9 GCA Chapter 67;
- 19 (3) arrest persons who violate a prohibition contained in
20 Chapter 47 of Title 9 GCA; and
- 21 (4) make seizures of any forged or counterfeit goods imported
22 into Guam in violation of Chapter 47 of Title 9 GCA.”

23 **Section 5. Severability.** *If* any provision of this Law or its application
24 to any person or circumstance is found to be invalid or contrary to law, such
25 invalidity shall *not* affect other provisions or applications of this Law which

1 can be given effect without the invalid provisions or application, and to this
2 end the provisions of this Law are severable.

3 **Section 6. Savings Clause.** This Act and any repealer contained herein
4 shall not be construed as affecting any existing right acquired under contract
5 or acquired under statutes repealed or under any rule, regulation or order
6 adopted under the statutes. The enactment of the Act shall not have the effect
7 of terminating, or in any way modifying, any liability, civil or criminal, which
8 shall already be in existence on the date this Act becomes effective.

9 **Section 7. Effective Date.** This Act shall take effect upon its enactment.