

9 GCA CRIMES AND CORRECTIONS
CH. 47 TRADEMARK COUNTERFEITING ACT

CHAPTER 47
TRADEMARK COUNTERFEITING ACT

SOURCE: Added by P.L. 27-72:3.

- § 47.10. Definitions.
- § 47.20. Counterfeiting of Registered Trademarks.
- § 47.30. Trafficking of Counterfeited Goods.
- § 47.40. Aiding and Abetting the Trafficking of Counterfeit Goods.
- § 47.50. Defenses, Affirmative Defenses, and Limitations on Remedies.
- § 47.60. Enforcement.
- § 47.70. Restitution.
- § 47.80. Protection for Landlords.

§ 47.10. Definitions.

For purposes of the Trademark Counterfeiting Act,

(a) the term ‘*registered mark*’ means:

- (1) a trademark or trade name registered in the United States and Trademark Office, or in any State, Commonwealth or Territory of the United States, or registered in Guam pursuant to §20401 *et seq.* of Title 5, Guam Code Annotated, or in any other country, or protected by the *Amateur Sports Act of 1978*, 36 U.S.C. §380, or recognized by common law, whether or not the defendant knew such trademark or trade name was so registered or protected; and
- (2) used without the consent of the registrant;

(b) the term ‘*counterfeit mark*’ means:

- (1) a spurious mark,
 - (i) that is used in connection with trafficking goods or services;
 - (ii) that is identical with, or substantially indistinguishable from, a mark registered for those goods or services on the principal register in the United States Patent and Trademark Office or registered with the Administrator of the Guam Economic Development and Commerce Authority (‘GEDCA’) and with the Department of Revenue and Taxation of the government of Guam, or in any other State, Commonwealth or Territory of the United States,

9 GCA CRIMES AND CORRECTIONS
CH. 47 TRADEMARK COUNTERFEITING ACT

whether or not the defendant knew such mark was so registered; and

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

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

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

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

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

SOURCE: Added by P.L. 27-72:3.

§ 47.20. Counterfeiting of Registered Trademarks.

Whoever intentionally and knowingly reproduces, counterfeits, copies, or colorably imitates a registered mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements, to be specifically used in commerce upon, or in connection with the sale, offering for sale, distribution, or advertising of goods or services or in connection with such use, shall be guilty of the crime of counterfeiting. The crime of counterfeiting shall be punishable as follows:

(a) Misdemeanor. A person shall be convicted of a misdemeanor if the goods or services to which the forged or counterfeit trademarks

9 GCA CRIMES AND CORRECTIONS
CH. 47 TRADEMARK COUNTERFEITING ACT

or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be attached, affixed, or used in connection with, have a cumulative retail sale value of Five Hundred Dollars (\$500) or less.

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

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

SOURCE: Added by P.L. 27-72:3.

§ 47.30. Trafficking of Counterfeit Goods.

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

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

(b) Third Degree Felony. A person shall be guilty of a third degree felony if the trafficked goods or services to which the forged or counterfeit trademarks or service marks are attached, affixed, or used in connection with, or to which the defendant intended they be

9 GCA CRIMES AND CORRECTIONS
CH. 47 TRADEMARK COUNTERFEITING ACT

attached, affixed, or used in connection with, have a cumulative retail sale value in excess of Five Hundred Dollars (\$500) but less than One Thousand Five Hundred Dollars (\$1,500).

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

SOURCE: Added by P.L. 27-72:3.

§ 47.40. Aiding and Abetting the Trafficking of Counterfeit Goods.

A person is guilty of aiding or abetting the trafficking of counterfeit goods who:

(a) solicits a person to purchase counterfeit goods; or

(b) knowingly and for the purpose of trafficking of counterfeit goods, transports any person into, out of or within Guam, or who procures or pays for the transportation of any person into, out of or within Guam for the purpose of trafficking counterfeit goods.

SOURCE: Added by P.L. 27-72:3.

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

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

SOURCE: Added by P.L. 27-72:3.

§ 47.60. Enforcement.

(a) Except as otherwise provided in this Chapter, any goods to which a forged or counterfeit trademark or service mark is attached or affixed, or any tools or other reproduction materials for the reproduction of any specific forged or counterfeit trademark or service mark, which are produced or possessed in violation of this Chapter shall be seized by any law enforcement officer. Upon a determination by a preponderance of the evidence that any articles in the possession of the defendant in a prosecution under this Chapter bears a counterfeit mark, the Attorney General may obtain an order from the Court for the destruction of the counterfeit goods, unless the owner of the registered or protected trademark or service mark

9 GCA CRIMES AND CORRECTIONS
CH. 47 TRADEMARK COUNTERFEITING ACT

which has been forged or counterfeit approves a different disposition.

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

SOURCE: Added by P.L. 27-72:3.

§ 47.70. Restitution.

In addition to any punishment ordered under §§ 47.20, 47.30 and 47.40, the Court shall order any person found in violation of this Chapter to make restitution to the government of Guam or to the Customs and Quarantine Agency, as the case may be, for the cost of storage and destruction of the counterfeit or forged goods. Such person shall be jointly and severally liable for any restitution.

SOURCE: Added by P.L. 27-72:3.

§ 47.80. Protection for Landlords.

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

SOURCE: Added by P.L. 27-72:3.
