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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
THIRTY-SECOND GUAM LEGISLATURE
155 Hesler Place, Hagåtña, Guam 96910

November 13, 2013

The Honorable Edward J.B. Calvo
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
***Hagåtña,* Guam 96910**

OFFICE OF THE GOVERNOR
CENTRAL FILES
RECEIVED BY
TIME 11:28 a.m. DATE 11/15/13

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 35-32(COR), 74-32(LS), 75-32(LS), 91-32(COR), 94-32(COR), 98-32(LS), 99-32(LS), 108-32(COR), 112-32(COR), 116-32(COR), 133-32(COR), 134-32(COR), 140-32(COR), 141-32(COR), 143-32(COR), 145-32(LS), 150-32(COR), 153-32(COR), 154-32(COR), 156-32(COR), 157-32(COR), 158-32(COR), 160-32(COR), 161-32(COR), 162-32(LS), 165-32(COR), 170-32(LS), 176-32(COR), 189-32(COR), 193-32(COR), 194-32(COR), 195-32(COR), 196-32(COR), 200-32(COR), 205-32(COR), 210-32(COR), 211-32(COR) and 217-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on November 12, 2013.

Sincerely,

Tina Rose Muña Barnes
Legislative Secretary

Enclosures (38)

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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

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

This is to certify that **Bill No. 156-32 (COR), "AN ACT TO ADD A NEW CHAPTER 14 TO TITLE 2, GUAM CODE ANNOTATED, RELATIVE TO CREATING THE GUAM TRADEMARK COMMISSION FOR THE DEVELOPMENT OF A CULTURAL TRADEMARK STATUTE FOR THE PROTECTION AND PRESERVATION OF GUAM'S CHAMORRO CULTURAL ARTS",** was on the 12th day of November 2013, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 15th day of Nov., 2013, at 11:28 o'clock A.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 156-32 (COR)
As amended on the Floor.

Introduced by:

Judith T. Won Pat, Ed.D.
B. J.F. Cruz
T. R. Muña Barnes
Chris M. Dueñas
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
Vicente (ben) C. Pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas
Aline A. Yamashita, Ph.D.

AN ACT TO *ADD* A NEW CHAPTER 14 TO TITLE 2, GUAM CODE ANNOTATED, RELATIVE TO CREATING THE GUAM TRADEMARK COMMISSION FOR THE DEVELOPMENT OF A CULTURAL TRADEMARK STATUTE FOR THE PROTECTION AND PRESERVATION OF GUAM'S *CHAMORRO* CULTURAL ARTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslatura* finds that intellectual property rights (IP) are the main asset of any company. Trademarks specifically have the purpose of identifying the goods and services of any industry,

in addition to representing the capital gain of the business. Locally, businesses or individuals can protect their intellectual property rights, trademarks and copyrights under the U.S. Trademark Act (15 USC 1051 *et seq.*) and the Model State Trademark Act. However, such filings must be made with the U.S. Federal Trademark and Patent office.

In 1995, Public Law 23-62 (Title 5 GCA, Chapter 20, Article 4) was enacted to provide an applicant with the ability to locally register a U.S. trademark, patent or copyright within Guam. The statute further provides for a Guam Certificate of Registration for any person desiring to register any print, label or trademark intended to be attached or applied to goods or manufactured articles, or to bottles, boxes or packages containing the goods or manufactured articles. However, the statue needs to be revisited to provide more comprehensive guidelines and better legal protections for those products made and registered exclusively on Guam.

Guam's unique *Chamorro* culture is evident in our island's cultural arts, traditions, and expressions that span thousands of years. Ancient *Chamorros* practiced sustainable land use and resource management through irrigated farming, land cultivation, fishpond building, near-shore fishing conservation, and legendary seafaring navigation utilizing the world renowned *Chamorro Proa* design.

In the expressive cultural arts, *Chamorros* developed highly refined art forms, including weaving; wood, bone and stone carving; tattooing; adornments; clothing; musical instruments; weaponry; medicines; and healing arts.

The cultural arts of *Chamorros* practiced today are a vital and authentic expression of a dynamic culture. The practice of these customary arts are visible in daily practices through ceremonies of dance, music, and sacred rites. Many *Chamorro* native artists today are actively rediscovering and reviving their cultural traditions.

Chamorro cultural arts are being lost through limited access to raw materials, a flood of imitations in the marketplace, and stereotyped overuse or culturally inappropriate use in public environments. As is the case for many indigenous peoples throughout the world, *Chamorros* are in danger of losing these unique cultural practices through assimilation into the dominant Westernized society.

A new generation of local artists and entrepreneurs are engaged in revitalization of our culture through their artwork, handcrafted gift items, carvings, jewelry making, t-shirt designs, music, dance, film, paintings, photography, and other locally made products. Many local artists struggle to maintain authentic cultural practices and preserve the viability of supporting themselves as artists against the pressures of mass tourism and related commoditization and labeling of all things "*Chamorro*" or "Made in Guam" to the million visitors who come to Guam every year.

Purchasers oftentimes cannot distinguish (or appreciate the difference) between a hand-made necklace of unique shells or other authentic artifacts gathered from the shores of Guam, having a value of several hundred of dollars, from one made of look-alike plastic molded shells strung together in a "copycat style" made in Taiwan or the Philippines.

This type of uninformed purchasing by visitors (and even local residents) repeated every day for practically every item of the cultural arts across the entire tourism industry results in the devaluing of authentic native cultural artworks and the inability of native cultural artisans making quality products to support themselves through their art.

In 1986, the 18th Guam Legislature recognized that identification and protectionist measures needed to be instituted to protect products made in Guam, and offer the pride and proof that comes with boasting of an authentic product of

Guam. The creation of the Guam Product Seal permit program was intended to address this concern, and provide island pride in Guam-made products. The enabling legislation that provided for a Guam Product Seal program was contained in Public Law 18-42.

In 2012, Public Law 31-150 established the Guam Product Seal Task Force to reenergize the Guam Product Seal concept and revisit, some twenty-five (25) years later, the mandate and its accompanying administrative rules, in order to provide incentives for permit holders, ensure compliance and enforcement by stakeholders and the retail industry in Guam, and to actively engage in the promotion of the Guam brand by emphasizing the distinctiveness of offerings that proudly carry the "Made in Guam" label.

As a result of the work and findings of the Task Force, Public Law 31-136 was passed promulgating the rules and regulations to prohibit any retail store, wholesaler, manufacturer, importer, distributor, or business establishment to sell any consumer commodity that has the word "Guam" or "Chamorro," or a derivation of such words, on the packaging of the product, if such product was *not* manufactured in Guam, unless the place where the product was manufactured is clearly and permanently labeled on the product.

Although the Guam Product Seal Program offers some regulatory control and protection of products made in Guam, *I Liheslatura* finds that we must further protect our native *Chamorro* culture, traditional practices, and new and evolving cultural practices (art, music, dance, lyrics, video, film, photography, etc.) through a comprehensive local intellectual property rights and cultural trademark statute.

Internationally, protection of surviving expressions of native cultures, and traditional cultural expressions (acronym "TCE" or "TKE") has been studied at the highest levels by the World Intellectual Property Organization (WIPO) under a mandate from the World Convention on Biodiversity of 1992 that was signed by

187 countries, including the United States. WIPO is a specialized agency of the United Nations dedicated to developing a balanced and accessible international intellectual property (IP) system that rewards creativity, stimulates innovation and contributes to economic development worldwide, while safeguarding the public interest. It studies and recommends international treaty regimes to member states to promote the protection of intellectual property rights worldwide through cooperation among states and in collaboration with international organizations.

For decades, American Indian tribes also experienced a long period during which cultural arts were degraded by outside producers making imitation "Indian" products and selling them in markets catering to Indian reservation visitors. The U.S. Congress first enacted the Indian Arts and Crafts Act (IACA) in 1935, and it was reauthorized in 1990 with several significant changes to the original statute. The IACA reserved to tribal members the exclusive use of designations of "Indian Made" and specific tribal trademarks for authentic products hand-made by Native Americans, providing for civil and criminal penalties of up to $250,000 in fines and 5 years in prison for individuals, and fines of up to $1,000,000 for businesses.

Under federal U.S. trademark law, a trademark may certify products or services as endorsed, approved by, or associated with a particular group of people, even a racial or ethnic group. For example, service marks such as "NAACP", "Knights of Columbus", "Daughters of the American Revolution", or "Chinese Chamber of Commerce" are *not* illegal or unconstitutional even if the service organization has a membership that is limited to a particular race or ethnicity.

One of the most successful examples of a cultural (certification) trademark program has been the Maori "Toilho" program in New Zealand. Initial legislation was enacted to undertake a process of consultation with the Maori artists and tribal communities for consensus building beginning in Year 2000, funded with about $NZ 2 million. The Toilho cultural trademark program was implemented through

legislation enacted in 2002, and is administered through the Arts Council of New Zealand in consultation with its parallel Maori arts agency, the TeWakaToi Cultural Arts Board. In a short time, the ToiIho program has become successful in establishing the ToiIho Logo as a symbol of excellence in Maori cultural arts.

In 2016, Guam will host the 12th Festival of Pacific Arts. The Festival brings together artists and cultural practitioners from around the Pacific region for two weeks of festivities. The Festival is recognized as a major regional cultural event, and is the largest gathering in which the people of the Pacific unite to enhance their respect and appreciation of one another. The Festival has been held every four years since 1972, and delegations from 27 Pacific Island Nations and Territories have come together to share and exchange their cultures at each Pacific Arts Festival. Guam expects a delegation of over 2,500 performers, artists and cultural practitioners, in addition to thousands of visitors from Asia and Festival followers. Public Law 30-83 created the 12th Festival of Pacific Arts Coordinating Committee, with the duties of organizing and planning the Festival. It was discussed in these planning meetings that it is imperative, prior to this Festival, that Guam have a local statute in place for the protection of local intellectual property rights and cultural trademarks for Guam and other participating countries.

Section 2. A new Chapter 14 is hereby *added* of Title 2, Guam Code Annotated, to read:

"CHAPTER 14

GUAM TRADEMARK COMMISSION

§ 14101. Short Title.

§ 14102. Guam Trademark Commission, Established.

§ 14103. Convening of the Guam Trademark Commission.

§ 14104. Composition of Guam Trademark Commission.

§ 14105. Duties of Commission.

§ 14106. Conduct of Meetings.

§ 14101. Short Title. This Chapter *shall* be known as the *Guam Trademark Commission Act.*

§ 14102. Guam Trademark Commission, Established. The Guam Trademark Commission is hereby established for the special purpose of developing policy direction and recommendations relative to coordination, planning, implementation, administration, promotion, compliance and enforcement of the "Guam Trademark and Intellectual Property Rights Act" and the "Guam Cultural Trademark Act."

§ 14103. Convening of the Guam Trademark Commission. The Guam Trademark Commission *shall* be under the direction of the Chairperson of the Legislative Committee with oversight over Cultural Affairs, and convened pursuant to provisions of this Act.

§ 14104. Composition of Guam Trademark Commission. The composition of the Commission *shall* be as follows:

(a) The Legislative Chairperson with oversight over Cultural Affairs *shall* serve as the Chairperson of the Commission;

(b) The Director of the Department of Revenue and Taxation (DRT), or his assigned representative, *shall* serve as the Vice-Chairperson. DRT is empowered to enforce regulations and collect levies and fines from companies found in violation of the law;

(c) The President of the Department of *Chamorro* Affairs (DCA), or his assigned representative. DCA can offer insight into the uniqueness of the Guam brand and the importance of protecting the aspects of the *Chamorro* culture and heritage;

(d) The General Manager of the Guam Visitors Bureau (GVB), or his assigned representative. GVB is tasked with promoting the Guam brand in its entirety;

(e) The Administrator of the Guam Economic Development Authority (GEDA), or his assigned representative. GEDA offers programs and opportunities for economic development;

(f) The Attorney General of Guam (AGO), or his designated legal representative from the Office of the Attorney General. The AGO *shall* provide guidance on intellectual property rights relative to the Guam brand, and legal opinions as requested;

(g) The Chairperson of the Guam Council on the Arts and Humanities (CAHA), or an assigned representative;

(h) One (1) member of *I Liheslatura* Majority appointed by the Speaker. The Speaker may appoint herself, or a designee;

(i) One (1) member of *I Liheslatura* Minority appointed by the Speaker;

(j) Two (2) members appointed by the Speaker of *I Liheslatura*, representing organizations active in the promotion of *Chamorro* Cultural Arts on Guam.

(k) The Commission *shall* include additional public and private sector members to serve on subcommittees in the four areas of visual arts, performing arts, literary arts, and traditional arts, demonstration and exhibitions, or elect them as committee members, provided that they possess significant background, knowledge and experience with locally produced products; and the Commission may prescribe special procedures for their participation.

§ 14105. Duties of the Commission. The Commission *shall* work collaboratively to create policy recommendations, rules and legislation for two (2) specific areas in defining and developing a Guam Trademark Law:

(a) A new "Guam Trademark and Intellectual Property Rights Act" to create and regulate the trademark law in Guam as it relates to or mirrors the current applicable U.S. Trademark and Intellectual Property Rights statute, and provide additional statutes as needed.

(b) A cultural (certification) trademark program, titled, the "Guam Cultural Trademark Act" (similar to that of the Maori "ToiIho" program in New Zealand), to promote and license *Chamorro* cultural arts manufactured or produced on Guam. The Commission may hire professional legal or technical services to assist and perform studies, roundtables, conduct polls, surveys and/or conferences to report findings and present initial guidelines for a Guam Cultural Trademark program so that a proposal can be presented to the broader community as a concrete, well-considered, and cohesive program. Guidelines should be discussed to include, but not be limited to, the following types of issues:

(1) Identification of initial types of cultural arts for use of trademark.

(2) Criteria for lineage of cultural knowledge qualifying for use of trademark.

(3) Criteria for authenticity of works qualifying for use of trademark.

(4) Criteria for quality of works qualifying for use of trademark.

(5) Criteria for cultural content qualifying for use of trademark.

(6) Sources, meanings and extrinsic functions of proposed trademark image.

(7) Proposed process for certifying artists for use of trademark.

(8) Proposed process for certifying arts organizations for use of trademark.

(9) Proposed process for certifying vendors for use of trademark.

(10) Proposed terms for use of trademark in advertising, marketing, and sales.

The Commission *shall* submit proposed legislation after its study for a new "Guam Trademark and Intellectual Property Rights (IP) Act" and the "Guam Cultural Trademark Act" to *I Liheslaturan Guåhan no later than* one hundred eighty (180) calendar days from the date of enactment of this Act, and *shall* be subject to legislative approval and perform all functions necessary to effectuate the mission of the Commission as adopted.

§ 14106. Conduct of Meetings, Quorum. The Commission *shall* meet once a month to discuss and assess progress and recommendations.

A simple majority of members of the Commission *shall* constitute a quorum to do business; any action taken by the Commission *shall* be by a simple majority of the members."

Section 3. Appropriation. The sum of Fifty Thousand Dollars ($50,000) is hereby appropriated from the Tourist Attraction Fund (TAF) to the Guam Trademark Commission to fulfill the requirements of §14105 in Section 2 of this Act. Any unexpended funds remaining in the Commission's budget at the

conclusion of its studies *shall* be deposited to the Guam Economic Development Authority for the Guam Product Seal Program.

Section 4. Effective Date. The provisions of this Act *shall* take effect upon enactment into law. The first meeting of the Guam Trademark Commission *shall* take place *no later than* twenty (20) days after enactment. If the twentieth (20^{th}) day of the first meeting and subsequent meetings fall on a Saturday, Sunday or a government of Guam holiday, then the first meeting of the Commission *shall* take place on the next available business day.

Section 5. Sunset Provision. The Guam Trademark Commission *shall* remain in effect until the recommendations of the Guam Trademark Commission are approved by *I Liheslaturan Guåhan.*

Section 6. Severability. *If* any provision of this Act or the application thereof to any person or circumstance is held invalid, such validity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.