

# Protecting Intellectual Property

Saturday, August 10, 2013

8:00 am - 12:00 pm

Terlaje Professional Building, Hagåtña

## Bill 156-32

### An Act to Create a Guam Trademark Commission and a Cultural Trademark Statute

Presented by

Robert Tupaz

Office of Speaker Judith Won Pat

32nd Guam Legislature

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*I Mina'Trentai Dos Na Liheslaturan Guahan*  
**Bill Log Sheet**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
<b>156-32 (COR)</b>	Judith T. Won Pat, Ed.D. B. J.F. Cruz Tina R. Muna Barnes C. M. Duenas	AN ACT TO CREATE THE GUAM TRADEMARK COMMISSION FOR THE DEVELOPMENT OF A CULTURAL TRADEMARK STATUTE FOR THE PROTECTION AND PRESERVATION OF GUAM'S CHAMORRO CULTURAL ARTS	7/19/2013 2:50 p.m.	07/23/13	Committee on Municipal Affairs, Tourism, Housing, and Hagatna Restoration and Development Authority			





## COMMITTEE ON RULES

*I Mina'trentai Dos na Liheslaturan Guåhan* • The 32nd Guam Legislature

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Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

July 23, 2013

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER


### MEMORANDUM

Senator  
Vicente (Ben) C. Pangelinan  
Member

**To: Rennae Meno**  
*Clerk of the Legislature*

**Attorney Therese M. Terlaje**  
*Legislative Legal Counsel*

Speaker  
Judith T.P. Won Pat, Ed.D.  
Member

**From: Senator Thomas C. Ada**   
*Acting Chairperson of the Committee on Rules*

Senator  
Dennis G. Rodriguez, Jr.  
Member

**Subject: Referral of Bill No. 156-32(COR)**

Vice-Speaker  
Benjamin J.F. Cruz  
Member

As the Acting Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 156-32(COR)**.

Legislative Secretary  
Tina Rose Muña Barnes  
Member

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Senator  
Frank Blas Aguon, Jr.  
Member

Should you have any questions, please feel free to contact our office at 472-7679.

Senator  
Michael F.Q. San Nicolas  
Member

*Si Yu'os Ma'åse!*

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Attachment





Senator  
Aline Yamashita  
Member



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

Bill No. 156-02 (COR)

Introduced by:

Judith T. Won Pat, Ed.D.   
B. J.F. Cruz   
Tina R. Muna Barnes   
C. M. Duenas 

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**AN ACT TO CREATE THE GUAM TRADEMARK  
COMMISSION FOR THE DEVELOPMENT OF A  
CULTURAL TRADEMARK STATUTE FOR THE  
PROTECTION AND PRESERVATION OF GUAM'S  
CHAMORRO CULTURAL ARTS.**

2013 JUL 19 PM 2:50 

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

2           **Section 1. Legislative Findings and Intent.** *I Liheslatura* finds that  
3 intellectual property rights (IP) are the main asset of any company. Trademarks  
4 specifically, have the purpose of identifying the goods and services of any industry  
5 in addition to representing the capital gain of the business. Locally, businesses or  
6 individuals can protect their intellectual property rights, trademarks and copyrights  
7 under the US Trademark Act (15 USC 1051 et seq.) and the Model State  
8 Trademark Act. However, such filings must be made with the U.S. Federal  
9 Trademark and Patent office.

10           In 1995, P.L. 23-62 (5 GCA Chapter 20, Article 4) was enacted to provide  
11 an applicant the ability to locally register a U.S. trademark, patent or copyright  
12 within the Territory of Guam. The statute further provides for a Guam Certificate

1 of Registration for any person desiring to register a print, label or trademark  
2 intended to be attached or applied to goods or manufactured articles or to bottles,  
3 boxes or package containing the goods or manufactured articles. However, the  
4 statue needs to be revisited to provide more comprehensive guidelines and better  
5 legal protection for those products made and registered exclusively on Guam.

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

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

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

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

25 A new generation of local artists and entrepreneurs are engaged in  
26 revitalization of our culture through their artwork, hand crafted gift items,



1 carvings, jewelry making, t-shirt designs, music, dance, film, paintings,  
2 photography and other locally made products. Many local artists struggle to  
3 maintain authentic cultural practices and preserve the viability of supporting  
4 themselves as artists against the pressures of mass tourism and related  
5 commoditization and labeling of all things "Chamorro" or "Made in Guam" to the  
6 million visitors who come to Guam every year.

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

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

17 In 1986, the 18<sup>th</sup> Guam Legislature recognized that identification and  
18 protectionist measures needed to be instituted to protect products made in Guam,  
19 and offer the pride and proof that comes with boasting of an authentic product of  
20 Guam. The creation of the Guam Product Seal permit program was intended to  
21 address this concern and provide island pride in Guam made products. The  
22 enabling legislation that provided for a Guam Product Seal program was contained  
23 in Public Law 18-42.

24 In 2012, P.L. 227-31 established the Guam Product Seal Task Force to  
25 reenergize the Guam Product Seal concept and revisit, some twenty-five (25) years  
26 later, the mandate and its accompanying administrative rules, in order to provide

1 incentives for permit holders, ensure compliance and enforcement by stakeholders  
2 and the retail industry in Guam and to actively engage in the promotion of the  
3 Guam brand by emphasizing the distinctiveness of offerings that proudly carry the  
4 "Made in Guam" label.

5 As a result of the work and findings of the task force, P.L. 226-31 was  
6 adopted promulgating the rules and regulations to prohibit any retail store,  
7 wholesaler, manufacturer, importer, distributor or business establishment to sell  
8 any consumer commodity that has the word "Guam" or "Chamorro," or a  
9 derivation of such words, on the packaging of the product, if such product was not  
10 manufactured in Guam, unless the place where the product was manufactured is  
11 clearly and permanently labeled on the product.

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

17 Internationally, protection of surviving expressions of native cultures,  
18 traditional cultural expression (acronym "TCE" or "TKE") has been studied at the  
19 highest levels by the World Intellectual Property Organization (WIPO) under  
20 mandate from the World Convention on Biodiversity of 1992 that was signed by  
21 187 countries including the United States. WIPO is a specialized agency of the  
22 United Nations dedicated to developing a balanced and accessible international  
23 intellectual property (IP) system that rewards creativity, stimulates innovation and  
24 contributes to economic development worldwide while safeguarding the public  
25 interest. It studies and recommends international treaty regimes to Member States

1 to promote the protection of Intellectual Property Rights worldwide through  
2 cooperation among states and in collaboration with international organizations.

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

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

18 One of the most successful examples of a cultural (certification) trademark  
19 program has been the Maori "Toi Iho" program in New Zealand. Initial legislation  
20 was enacted to undertake a process of consultation with the Maori artists and tribal  
21 communities for consensus building beginning in Year 2000, funded with about  
22 \$NZ 2 million. The Toi Iho cultural trademark program was implemented through  
23 legislation enacted in 2002, and is administered through the Arts Council of New  
24 Zealand in consultation with its parallel Maori arts agency, the Te Waka Toi  
25 Cultural Arts Board. In a short time, the Toi Iho program has become successful in  
26 establishing the Toi Iho Logo as a symbol of excellence in Maori cultural arts.

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

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

17 **“Chapter 14**

18 **Guam Trademark Commission**

- 19 § 14101. Short Title.
- 20 § 14102. Guam Trademark Commission.
- 21 § 14103. Convening of the Guam Trademark Commission.
- 22 § 14104. Composition of Guam Trademark Commission.
- 23 § 14105. Duties of Commission
- 24 § 14106. Conduct of Meetings.

25

1           **§ 14101. Short Title.** This Chapter shall be known as *The Guam*  
2 *Trademark Commission Act.*

3           **§ 14102. Guam Trademark Commission, established.** The  
4 Guam Trademark Commission is hereby established for the special purpose  
5 of developing policy direction and recommendations relative to  
6 coordination, planning, implementation, administration, promotion,  
7 compliance and enforcement of the “Guam Trademark and Intellectual  
8 Property Rights Act” and the “Guam Cultural Trademark Act”.

9           **§ 14103. Convening of the Guam Trademark**  
10 **Commission.** The Guam Trademark Commission shall be under the  
11 direction of the Chairperson of the Legislative Committee with oversight  
12 over Cultural Affairs and convened pursuant to provisions of this Act.

13           **§ 14104. Composition of Guam Trademark Commission.**

14           The composition of the Commission shall be as follows:

15           (a) The Legislative Chairperson with oversight on Cultural Affairs  
16 shall serve as the Chairperson of the Commission.

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

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

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

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

7 (f) The Attorney General of Guam or his designated legal  
8 representative from the office of the Attorney General; the AGO shall  
9 provide guidance on intellectual property rights relative to the Guam brand  
10 and opinions as requested;

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

13 (h) One (1) member of *ILiheslatura* Majority appointed by the  
14 Speaker. The Speaker may appoint herself or a designee.

15 (i) One (1) member of *ILiheslatura* Minority appointed by the  
16 Speaker.

17 (j) Three (2) members appointed by the Speaker of *ILiheslatura*  
18 representing organizations active in the promotion of Chamorro Cultural  
19 Arts on Guam.

20 (k) The Chairperson may include additional public and private  
21 sector members to serve on sub-committees or elect them as committee  
22 members, provided that they possess significant background, knowledge and  
23 experience with locally produced products; and the Commission may  
24 prescribe special procedures for their participation.

1           **§ 14105. Duties of the Commission.** The Commission shall work  
2 collaboratively to create policy recommendations, rules and legislation for  
3 two (2) specific areas in defining and developing a Guam Trademark Law:

4           (1) A new “Guam Trademark and Intellectual Property Rights Act”  
5 to create and regulate the trademark law in Guam as it relates to or mirrors  
6 current applicable U.S. Trademark and Intellectual Property Rights statute  
7 and provide additional statute as needed.

8           (2) A cultural (certification) trademark program, titled “Guam  
9 Cultural Trademark Act” (similar to that of the Maori "Toi Iho" program in  
10 New Zealand) to promote and license Chamorro Cultural Arts manufactured  
11 or produced in Guam. The Commission may hire professional legal or  
12 technical services to assist and perform studies, roundtables, conduct polls,  
13 surveys and/or conferences to report findings and present initial guidelines  
14 for a Guam Cultural Trademark program so that a proposal can be presented  
15 to the broader community as a concrete, well-considered, and cohesive  
16 program. Guidelines should be discussed to include, but not limited to the  
17 following types of issues:

18           (a) Identification of initial types of cultural arts for use of  
19 trademark.

20           (b) Criteria for lineage of cultural knowledge qualifying for  
21 use of trademark.

22           (c) Criteria for authenticity of works qualifying for use of  
23 trademark.

24           (d) Criteria for quality of works qualifying for use of  
25 trademark.

1 (e) Criteria for cultural content qualifying for use of  
2 trademark.

3 (f) Sources, meanings and extrinsic functions of proposed  
4 trademark image.

5 (g) Proposed process for certifying artists for use of  
6 trademark.

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

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

11 (j) Proposed terms for use of trademark in advertising,  
12 marketing, sales.

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

19 **§ 14106. Conduct of Meetings, Quorum.** The Commission shall  
20 meet once a month to discuss and assess progress and recommendations.

21 A simple majority of members of the council shall constitute a  
22 quorum to do business; any action taken by the council shall be by a simple  
23 majority of the members.

24 **Section 3. Appropriation.** The sum of Fifty Thousand Dollars  
25 (\$50,000.00) is hereby appropriated from the Tourist Attraction Fund (TAF) to the  
26 Guam Trademark Commission to fulfill the requirements of §14105 of this



1 Chapter. Any unexpended funds remaining in the Commission's budget at the  
2 conclusion of its studies shall be deposited to the Guam Economic Development  
3 Authority for the Guam Product Seal Program.

4 **Section 4. Effective Date.** Provisions of this Act shall take effect upon  
5 enactment into law. The first meeting of the Guam Trademark Commission shall  
6 take place no later than twenty (20) days after enactment. If the twentieth (20<sup>th</sup>)  
7 day of the first meeting and subsequent meetings fall on a Saturday, Sunday or a  
8 government of Guam holiday, than the first meeting of the Commission shall take  
9 place on the next available business day.

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

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



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