

03 AUG 2021  
TUESDAY



**MINISTRY OF INDUSTRIALIZATION, TRADE AND  
ENTERPRISE DEVELOPMENT**  
**OFFICE OF THE CABINET SECRETARY**

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Ref. No. MOITED/SDT/6/33

Social Security House, Block A  
P.O. Box 30547 - 00100  
NAIROBI, GPO  
KENYA

**Mr. Jeremiah Nyegenye**  
Clerk of the Senate  
Parliament Building  
NAIROBI

**Mr. Michael Sialai, EBS**  
Clerk of the National Assembly  
Parliament Building  
NAIROBI

Dear *Bwana Sialai*

**RE: THE ANTI-COUNTERFEIT (AMENDMENT) REGULATIONS, 2021 AND  
THE ANTI-COUNTERFEIT (RECORDATION) REGULATIONS, 2021**

The above matter refers.

In line with the provisions of Section 11 of the Statutory Instruments Act No. 23 of 2013, I write to you providing a statement explaining the purpose and operation of the above Regulations.

Attached herewith please find the Explanatory Memorandum, Public Participation Report and copies of both Regulations published vide Legal Notice No. 117 and 118 of 23<sup>rd</sup> July 2021.

Yours *Sincerely*

*B. Moina*

Betty C. Moina, EGH  
**CABINET SECRETARY**

NATIONAL ASSEMBLY  
**RECEIVED**  
02 AUG 2021  
DEPUTY CLERK  
P. O. Box 41842 - 00100, NAIROBI

NATIONAL ASSEMBLY  
**RECEIVED**  
30 JUL 2021  
CLERK'S OFFICE  
P. O. Box 41842, NAIROBI

① DLPS  
DIAADSC  
Please deal  
02/08/21  
PARLIAMNT  
OF KENYA  
LIBRARY  
29<sup>th</sup> July, 2021  
② *Head, Take note*  
*pro acknowledge receipt,*  
*course taking register to the*  
*committee*  
*3/8/2021*

③ *MM please deal*  
*[Signature]*  
*03/08*

**Copy to: Amb. Johnson Weru**  
Principal Secretary  
State Department for Trade and Enterprise Development  
Teleposta Building  
**NAIROBI**

**Fridah Kaberia**  
Ag. Executive Director  
Anti-Counterfeit Authority  
National Water Plaza,  
3<sup>rd</sup> Floor, Dunga Rd  
**NAIROBI**

**Encl.**

## EXPLANATORY MEMORANDUM

### EXPLANATORY MEMORANDUM TO THE ANTI-COUNTERFEIT {AMENDMENT} REGULATIONS, 2021

#### PART I

Name of the Instrument	:	Anti-Counterfeit {Amendment} Regulations, 2021
Name of the Parent Act	:	Anti-Counterfeit Act, No. 13 of 2008
Enacted Pursuant to	:	Sections 34A as read together with Section 37 of the Anti-Counterfeit Act, No. 13 of 2008
Name of the Ministry/Department	:	Ministry of Industrialization, Trade & Enterprise Development, State Department for Trade & Enterprise Development
Gazetted on	:	
Tabled on	:	

#### PART II:

##### 1. Purpose of the Statutory Instrument

- 1.1 To give effect to, and ensure the implementation of the substantive provisions of Sections 34A of the Anti-Counterfeit Act No. 13 of 2008, on compounding of offences and management of agents appointed by intellectual property rights owners.

##### 2. Legislative Context

- 2.1 Alternative Dispute Resolution is key in the resolution of intellectual property disputes and to ensure that the formal court system is not clogged with matters that can easily be settled out of Court. The necessity to formalize alternative dispute resolution informed the enactment of Section 34A of the Anti-Counterfeit Act, No. 13 of 2008 on compounding of offences. The Anti-Counterfeit (Amendment) Regulations, 2020 is intended to implement Section 34A of the Act.
- 2.2 Section 34A of the Anti-Counterfeit Act No. 13 of 2008 empowers the Executive Director to order the payment of a fine and the forfeiture of offending goods. The Regulations are intended to operationalize the provisions of this section. This is achieved by prescribing the procedure in applying for compounding and the requisite fees
- 2.3 Agents under the Anti-Counterfeit Act No. 13 of 2008 are empowered to lodge complaints and issue expert opinions in criminal and civil suits. Section 33 of the Act allows an agent of an intellectual property right owner where he has reasonable cause to suspect that an offence under section 32 of the Act has been or is being committed, to lay a complaint with the Executive Director. Further, section 26(9) elevates the opinion of an agent, issued in criminal or civil proceedings concerning an act of dealing in counterfeit goods, as an expert opinion. This has resulted in the need regulate this function in order to ensure professionalism and accountability attached to the agency function under the Act.

2.4 The Anti-Counterfeit (Amendment) Regulations, 2021 are therefore intended to give effect to the provisions of the parent Act.

### **3. Policy Background**

- 3.1 The Anti-Counterfeit Authority is mandated to combat counterfeiting, trade and other dealings in counterfeit goods in Kenya. The Anti-Counterfeit Act No. 13 of 2008 defines counterfeiting as engaging in prohibited acts without the authority of the owner of intellectual property right subsisting in Kenya or outside Kenya in respect of protected goods.
- 3.2 The owners of intellectual property rights by practice appoint agents for the purpose of securing their interests in investigating, laying formal complaints, sampling, inspecting, issuing analysis reports and all attendant functions in investigative and prosecutorial engagements. These agents are therefore critical players in the execution of the Authority's mandate described above.
- 3.3 In light of the above, there is a clear need to regulate the conduct of agents in the context of combating counterfeiting. The Anti-Counterfeit (Amendment) Regulations, 2021 are intended to do so by providing for regulation in the following facets of the agency relationship:
- a. Providing for a code of conduct for agents.
  - b. Requiring registration of agents with the Authority.
  - c. Maintaining a register of all agents.
  - d. Providing for the deregistration of an agent for failure to meet minimum prescribed standards.
- 3.4 In embracing the spirit of alternative forms of dispute resolution and recognizing the need for expeditious resolution of disputes, Section 34A of the Act provides for compounding of offenses. This section allows the Executive Director, upon a voluntary application, to fine and order for forfeiture of offending articles under the Act. It aims at concluding an investigation in an efficient and cost effective manner. The Anti-Counterfeit (Amendment) Regulations, 2021 actualize section 34A of the Act.

### **4. Consultation Outcome**

- 4.1 Manufacturers represented by Kenya Association of Manufacturers, public institutions with a role to play in protecting intellectual property rights, intellectual property rights owners, legal practitioners, the parent Ministry, general members of the public and sector associations of manufacturers were consulted between May and June 2019. Both private and public sectors were consulted.
- 4.2 Through comments received and at a public participation meeting held on 16<sup>th</sup> May 2019 participants overwhelmingly approved the draft regulations.

- 4.3 The meeting agreed to that Kenya Association of Manufacturers does chair a technical committee to fine-tune the proposed Regulations. This was done and the draft regulations enjoy the support of members of the Kenya Association of Manufacturers who are the intellectual property rights owners and who will pay the proposed fees
- 4.4 Hard copies of the draft regulations were made available to the public and stakeholders for those who attended the public forums and digital copies through the Authority's website for those who preferred to submit written comments.
- 4.5 In compliance with section 5(2)(a) of the Statutory Instruments Act, No. 23 of 2013, the Authority invited local manufacturers through the Kenya Association of Manufacturers, Kenya Intellectual Property Institute, Kenya Plant Health Inspectorate Service, among others to the public forums. These are key stakeholders as they have practical knowledge on the subject of the regulations.
- 4.6 The Authority collected, considered and incorporated in the draft regulations the views of the public and key stakeholders. The Regulations were then forwarded to the Attorney General through the Ministry for legislative drafting and publication in the Kenya Gazette.

## **5. Guidance**

- 5.1 The Anti-Counterfeit {Amendment} Regulations, 2021 will entail the registration and management of agents of IPR holders and compounding of offenses as an alternative form of resolving disputes relating to infringement of intellectual property rights.
- 5.2 The Anti-Counterfeit Authority will conduct targeted trainings and awareness of all relevant stakeholders on a continuous basis on the Regulations, their requirements and how to comply prior to full rollout

## **6. Impact**

### **6.1 The Impact on Fundamental Rights and Freedoms**

Intellectual property rights constitute property under Article 260 of the Constitution. The statutory instruments will advance the protection of intellectual property rights as envisaged under Article 40(5) of the Constitution.

Counterfeit goods pose a danger to public health, public life, economic well-being, safety and security of Kenyans as guaranteed under Articles 26 and 43 of the Constitution. The statutory instruments will enhance and guarantee these fundamental rights.

### **6.2 The Impact on the Private Sector**

The private sector suffers from loss and erosion of brand value, loss of market share and disinterest in research and development as a result of counterfeiting. The statutory instruments will protect the private sector from these negative impacts.

### **6.3 The Impact on the Public Sector**

Consumption of counterfeit goods pose a danger to public health, public life, public safety and also results into loss of investment and loss of employment opportunities. Tax income will also go up.

Adoption of compounding will guarantee quicker resolution of IPR disputes thereby enhancing protection of the public from harmful effects of counterfeit goods. The Regulations will also serve to improve the quality of engagement between agents and the Authority

### **6.4 Impact Assessment**

An impact assessment has not been prepared for this Statutory Instrument as it falls within the exceptions provided under Section 9 of the Statutory Instruments Act, No. 23 of 2015.

## **7. Monitoring and Review**

7.1 The Authority shall review the outcome of the implementation of these regulations after 24 months. The success criteria shall be measured by the number of applications for compounding received and the number of registered agents.

7.2 The outcome of the compounding and agent management process and its effectiveness and efficiency will be reviewed internally quarterly by the Board of the Anti-Counterfeit Authority and be further subjected to annual review by the parent Ministry as part of performance contract appraisal and evaluation

## **8. Contact**

The contact person shall be the Deputy Director Enforcement & Legal Services, Anti-Counterfeit Authority, tel: 020 2280111, cell phone: 0733908192/0722908192, email; [info@aca.go.ke](mailto:info@aca.go.ke) / [jadera@aca.go.ke](mailto:jadera@aca.go.ke) National Water Plaza, 3rd Floor, Dunga Road Junction Industrial Area, P O Box, 47771-00100 (GPO), Nairobi, Kenya



**anti  
counterfeit  
authority**

*Promoting Genuine*

**REPORT OF THE OUTCOME OF THE PUBLIC PARTICIPATION ON THE DRAFT REGULATIONS TO  
OPERATIONALIZE SECTIONS 34A AND 34B OF THE ANTI-COUNTERFEIT ACT SUBMITTED TO  
THE CABINET SECRETARY, MINISTRY OF INDUSTRY, TRADE & COOPERATIVES.**

**Prepared and Submitted by the Anti-Counterfeit Authority**

**16<sup>TH</sup> SEPTEMBER, 2019**

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## **Executive Summary:**

Parliament in the ordinary exercise of its legislative mandate did enact amendments to the Anti-Counterfeit Act through Statute Law {Miscellaneous Amendments} Act, No. 18 of 2014 and Statute Law {Miscellaneous Amendments} Act, No. 18 of 2018.

Statute Law {Miscellaneous Amendments} Act, No. 18 of 2014 introduced Section 34A on compounding of offences.

Statute Law {Miscellaneous Amendments} Act No. 18 of 2018 introduced, inter alia, the requirement for recordation of intellectual property rights under Section 34B of the Anti-Counterfeit Act.

The two aforesaid provisions require subsidiary legislation to operationalize and implement. Section 37 of the Anti-Counterfeit Act vests the power to make regulations under the Act in the Cabinet Secretary.

The Cabinet Secretary did direct that public participation be conducted on the draft regulations. This report is therefore prepared to appraise the Cabinet Secretary on the public participation on the draft regulations.

## **Objectives of Public Participation:**

Article 10 of the Constitution requires that there be participation of the people in the enactment and application of the law.

Section 5 of the Statutory Instruments Act similarly require that before the making of any regulations, the regulation-making authority, in this case the Cabinet Secretary, must consult persons, inter alia, directly to be affected by the regulation. The persons directly affected by the proposed regulations are the intellectual property rights owners.

The object of this report therefore is to satisfy the Cabinet Secretary of both the constitutional and statutory requirements pre-requisite to the coming into force of the regulations to operationalize and implement Sections 34A & 34B of the Anti-Counterfeit Act.

## **Methodology:**

The methodology adopted in the process of participation of the people was both by way of invitation for submission of written memoranda and comments and oral submissions at scheduled meetings.

Both written and oral submissions were received from the industry, Kenya Association of Manufacturers, partner government institutions like Kenya Industrial Property Institute, law firms both local and international that represent brand holders and members of the public.

## **Background:**

The Anti-Counterfeit Authority {hereinafter "the Authority"} is a creature of Section 3 of the Anti-Counterfeit Act, No. 13 of 2008. The core statutory function of the Authority is to combat counterfeiting and other dealings in counterfeit goods.

The Authority commenced operations in June 2010. However, the present Anti-Counterfeit Regulations, 2010 were published in the Kenya Gazette on 20<sup>th</sup> August 2010.

The Anti-Counterfeit Act has since enactment in 2008 undergone amendments as follows: -

1. Statute Law {Miscellaneous Amendments} Act, No. 12 of 2012.
2. Statute Law {Miscellaneous Amendments} Act, No. 18 of 2014.
3. Statute Law {Miscellaneous Amendments} Act, No. 25 of 2015.
4. Statute Law {Miscellaneous Amendments} Act, No. 11 of 2017.
5. Statute Law {Miscellaneous Amendments} Act, No. 18 of 2018.

The above miscellaneous amendments brought certain substantive changes to the Anti-Counterfeit Act. Some of these changes require prescription by way of subsidiary legislation to implement.

Section 37 of the Anti-Counterfeit Act vests the power to make regulations in the Cabinet Secretary.

The Cabinet Secretary did direct public participation with regard to the draft regulations and this report is prepared and forwarded to satisfy the Cabinet Secretary that public participation has been carried out.

## **Public Participation**

This is a requirement of Article 10 of the Constitution and Section 5 of the Statutory Instruments Act, No. 23 of 2013.

The draft Anti-Counterfeit {Amendment} Regulations, 2019 and Anti-Counterfeit {Recordation} Regulations, 2019 have undergone through the requisite public participation as follows: -

1. On 7<sup>th</sup> May 2019 an advert was placed in the Standard newspaper the People for public participation on the draft regulations.
2. The advert called on members of the public and stakeholders to make their comments to an email address that was provided together with a mobile number.
3. The advert not only invited members of the public and stakeholders to the public forum at Boma Hotel, South C but also called upon them to forward their input.
4. On Thursday 16<sup>th</sup> May 2019 a public participation forum was conducted at Boma Hotel, South C.
5. A total of ninety-two (92) people attended from both the public and private sectors. The attendance was impressive.
6. The public institutions represented were, inter alia, Kenya Industrial Property Institute {KIPI}, Pharmacy & Poisons Board, Pest Control Products Board, National Police Service, Kenya Revenue Authority and Kenya Bureau of Standards.
7. The private sector participants were drawn from both manufacturers {intellectual property rights owners} such as Mabati Rolling Mills, East African Breweries Limited, British American Tobacco PLC, PZ Cussons, and Bayer East Africa Limited and law firms such as Coulson Harney.
8. Associations of manufacturers and also sector-based intellectual property rights owners also attended the meeting such as Kenya Association of Manufacturers, Alcoholic Beverages Association of Kenya and Seed Trade Association of Kenya.
9. Individual consumers also attended together with Retail Trade Association of Kenya and they gave their input.
10. The meeting of 16<sup>th</sup> May 2019 did agree on all aspects of the draft regulations save for fees that was delegated to a committee to be chaired by Kenya Association of Manufacturers.
11. Written memoranda were also received from several entities that helped to enrich the final draft.
12. Written memoranda were received from: -
  - a. Kenya Association of Manufacturers.

- b. Coulson Harney Advocates
  - c. Kenya Breweries/UDV(Kenya) Limited/East African Breweries Limited
  - d. Spoor & Fisher
  - e. British American Tobacco.
  - f. Alcoholic Beverages Association of Kenya.
13. On 7<sup>th</sup> June 2019, a meeting was held at the Kenya Association of Manufacturers' Boardroom in Westlands where the pending issue of fees were discussed and agreed.
14. The views presented were then collated and presented to the Board of the Anti-Counterfeit Authority that approved them for submission to the Cabinet Secretary on 13<sup>th</sup> September 2019.
15. As a consequence of the aforesaid public participation and subsequent approval of the Board the following drafts have been prepared for publication by the Cabinet Secretary: -
- i. Anti-Counterfeit {Amendment} Regulations, 2019.
  - ii. Anti-Counterfeit {Recordation} Regulations, 2019.

**The Specific Requirements of the Statutory Instruments Act:**

Section 5 of the Statutory Instruments Act is explicit on factors to consider in public participation and based on the persons that attended the public forum of 16<sup>th</sup> May 2019 and the participation of manufacturers led by Kenya Association of Manufacturers, it is submitted that the threshold set by Section 5 of the Statutory Instruments Act has been met.

The draft regulations as presented do not require a regulatory impact statement to be prepared as the same is precluded by Section 9{e} & {g} of the Statutory Instruments Act.

### **Benefits of the Proposed Regulations: -**

1. To align the existing Regulations to the Anti-Counterfeit Act and the Constitution. For instance, replacement of the word "Minister" with the phrase "Cabinet Secretary".
2. Enable the Authority to regulate the activities of agents appointed by intellectual property rights owners under Section 33{1} of the Anti-Counterfeit Act.
3. To ensure the financial independence of the Authority. Through the recordation process, the Authority aims to raise at least Kshs. 1,500,000,000 per annum. With financial independence, the Authority will be able to attain optimum human resource capability.
4. To ensure that the Authority has the requisite information for purposes of enforcing measures against counterfeiting. With the recordation in place, the Authority will have ready data for proactive enforcement and will rely less on the intellectual property rights owners.
5. Better protection of the health and safety of Kenyans from counterfeit goods. The implementation of the recordation requirements will ensure that the possibility of counterfeit goods being imported into Kenya is significantly reduced.

## **Conclusion:**

The proposed regulations have met the public participation threshold and the same are submitted to the Cabinet Secretary for publication.



**SPECIAL ISSUE**

Kenya Gazette Supplement No. 143

803  
THE NATIONAL ASSEMBLY  
PAPER No. 337  
31st July 2021

DATE: 03 AUG 2021 DAY: TUESDAY

LEGAL NOTICE NO. 117 ✓

THE ANTI-COUNTERFEIT ACT

(No. 13 of 2008)

TABLED

BY

CLERK AT  
THE TABLE:

Chief Whip  
Hon. Emmanuel Wanyenze, MP

Finlay Muriuki

IN EXERCISE of the powers conferred by section 37 of the Anti-Counterfeit Act, 2008, the Cabinet Secretary for Industrialization, Trade and Enterprise Development makes the following Regulations—  
THE ANTI-COUNTERFEIT (AMENDMENT) REGULATIONS, 2021

1. These Regulations may be cited as the Anti-Counterfeit (Amendment) Regulations, 2021. Citation.
2. The Anti-Counterfeit Regulations, 2010, in these Regulations referred to as the “principal Regulations”, are amended in regulation 2— Amendment of regulation 2 of L.N No. 126 of 2010.
  - (a) in the definition of the word “approved laboratory”, by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”;
  - (b) in the definition of the word “Board”, by deleting the word “Agency” and substituting therefor the word “Authority”; and
  - (c) in the definition of the word “Executive Director”, by deleting the word “Agency” and substituting therefor the word “Authority”.
3. Regulation 3 of the principal Regulations is amended by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”. Amendment of regulation 3 of L.N 126 of 2010.
4. Regulation 6 of the principal Regulations is amended in paragraph (2) by deleting the word “Agency” and substituting therefor the word “Authority”. Amendment of regulation 6 of L.N 126 of 2010.
5. Regulation 8 of the principal Regulations is amended in paragraph (2) by deleting the expression “sub-rule (1)” and substituting therefor the expression “paragraph (1)”. Amendment of regulation 8 of L.N 126 of 2010.
6. Regulation 13 of the principal Regulations is amended in paragraph (2)(c) by deleting the word “Agency” and substituting therefor the word “Authority”. Amendment of regulation 13 of L.N 126 of 2010.
7. Regulation 15 of the principal Regulations is amended in paragraph (1) by deleting the word “Agency” and substituting therefor the word “Authority”. Amendment of regulation 15 of L.N 126 of 2010.
8. Regulation 16 of the principal Regulations is amended by inserting the following new paragraph immediately after in paragraph (4) — Amendment of regulation 16 of L.N 126 of 2010.

(5) Upon destruction of any seized goods, the Executive Director shall issue a Destruction Certificate in Form ACA 16 set out in the First schedule.

9. The principal Regulations are amended in regulation 17(a) by deleting the word "Agency" and substituting therefor the word "Authority".

Amendment of  
regulation 17 of L.N  
126 of 2010.

10. The principal Regulations are amended by deleting regulation 18 and substituting therefor the following new regulation—

Amendment of  
regulation 18 of  
L.N.126 of 2010

Appointment of an  
agent.

18. (1) The owner of an intellectual property right may appoint an agent to act on his behalf by completing Form ACA 15 set out in the First Schedule and payment of the fee specified in the Second Schedule.

(2) An applicant who ordinarily resides outside Kenya or has a principal place of business outside Kenya may be represented by an agent.

(3) A person seeking to operate as an agent under this regulation shall apply, to the Authority, for admission as an agent in the Form ACA 17 set out in the First Schedule and accompanied by the fee specified in the Second Schedule.

(4) The admission granted under paragraph (3) shall be renewed annually.

(5) An application for renewal of admission as an agent shall be made to the Authority in form ACA 18 set out in the First Schedule and accompanied by the fee specified in the Second Schedule.

(6) The Authority shall maintain a register of all agents admitted under this regulation.

(7) The owner of an intellectual property may, at any time, revoke the appointment of an agent under this regulation and shall immediately notify the Authority in writing of such revocation.

(8) An agent, other than those that are members of any statutory professional body, appointed under this regulation shall, in addition to the conditions imposed by the Authority, meet the requirements set out under the Private Security Regulation Act, 2016.

No. 13 of 2016.

Code of Conduct.

18A. The Authority shall develop a Code of Conduct and any other manual for all agents admitted under these Regulations.

De-registration of an agent.

18B. (1) The Authority may de-register an agent on the following grounds.

- (a) gross misconduct;
- (b) failure to comply with the provisions of the Act or the Code of Conduct;
- (c) non-performance for a continuous period of at least six months;
- (d) in the interest of the public; or
- (e) such other reasonable cause.

(2) Before de-registration, the Executive Director shall grant the agent a reasonable opportunity to be heard.

(3) An agent de-registered by the Authority may apply to the High Court for judicial review of the decision and the decision of the High Court shall be final.

Exemption from certain requirements or conditions.

18C. (1) An agent may apply to the Authority to be exempted from any of the requirements or conditions imposed on agents under these Regulations.

(2) An application for exemption under paragraph (1) shall be made in the Form ACA 19 set out in the First Schedule and accompanied by the fee specified in the Second Schedule.

(3) The Authority may grant an exemption if satisfied that there are compelling and sufficient reasons to exempt the agent from the requirements or conditions of these Regulations.

11. The principal Regulations are amended by inserting the following new regulation immediately after regulation 20—

Amendment of regulation 20 of L.N.126 of 2010.

Application for compounding of offences.

20A. (1) An application for compounding of an offence in accordance with section 34A of the Act shall be made in the Form ACA 20 and accompanied by the fees specified in the Second Schedule.

(2) Upon receipt of an application under paragraph (1), the Executive Director may—

- (a) approve the application and make an order in Form ACA 21 set out in the First Schedule; or
- (b) reject the application and notify the applicant, in writing, within fourteen days of such decision.

(3) Where a complainant and a suspect likely to be charged with any offence under the Act reach an out of court settlement, the said agreement shall not be valid unless the settlement agreement is reached with the concurrence of the Authority

(4) Notwithstanding the provisions of these Regulations, the Executive Director may, in appropriate circumstances, allow the payment by instalment of any fees emanating directly out of any alternative dispute mechanism provided that such instalments shall not extend to a period of more than twelve months

12 Regulation 21 of the principal Regulations is amended in paragraph (2) by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary"

Amendment of  
regulation 21 of L.N.  
126 of 2010

13 Regulation 22 of the principal Regulations is amended by deleting the word "Minister" and substituting therefor the word "Cabinet Secretary"

Amendment of  
regulation 22 of L.N.  
126 of 2010

14 The First Schedule to the principal Regulations is amended by inserting the following new forms immediately after Form ACA 15—

Amendment of the  
First Schedule to L.N.  
126 of 2010

Form ACA 16

(r 16(5))

THE ANTI-COUNTERFEIT ACT, 2008  
The Anti-Counterfeit Authority  
DESTRUCTION CERTIFICATE

1	Name of the owner of seized goods	
2	Telephone number, postal and physical address of owner	
3	Name of agent if any	
4	Telephone number, postal and physical address of agent	
5	Type and quantity of seized goods	
6	Type and quantity of goods destroyed	
7	Name of the destroying company	
8	Telephone number, postal and physical address of destroying company	
9	Method of destruction	
10	Remarks	

This is to certify that the above stated goods were destroyed in compliance with the applicable environmental laws of Kenya on this                      Day of                      20

Witnessed by

Name

OWNER/AGENT

Signature

Date

Name ..... Signature ..... Date .....  
INSPECTOR

Name ..... Signature ..... Date .....  
DEPOT MANAGER

FORM ACA 17

(r. 18(3))

THE ANTI-COUNTERFEIT ACT, 2008  
The Anti-Counterfeit Authority

## APPLICATION FOR ADMISSION AS AN AGENT

The Executive Director,  
The Anti-Counterfeit Authority

1	Name of the Applicant	
2	Telephone number, postal, physical and email addresses of Applicant	
3	Remarks	

I, the applicant identified above, apply to be admitted to practice before the Authority.

- (i) I attach a copy of my identity card.  
(ii) I attach evidence that I satisfy the requirements of Regulation 18

Dated this ..... day of ..... 20.....

Name ..... Signature .....

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

.....  
EXECUTIVE DIRECTOR

## NOTES;

1. If space provided is not sufficient, please use a separate sheet of paper
2. This form shall be accompanied with a certified copy of the Power of Attorney.

FORM ACA 18

(r 18(5))

THE ANTI-COUNTERFEIT ACT, 2008  
The Anti-Counterfeit Authority

## APPLICATION FOR RENEWAL OF REGISTRATION AS AN AGENT

The Executive Director,  
The Anti-Counterfeit Authority

1	Name of the Applicant	
2	Telephone number, postal, physical and email addresses of Applicant	
3	Period when last registered	
4	Remarks	

- I, the applicant identified above, apply to be admitted to practice before the Authority
- (i) I attach a copy of my identity card
  - (ii) I attach evidence that I satisfy the requirements of Regulation 18 (3)

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Name \_\_\_\_\_ Signature \_\_\_\_\_

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

EXECUTIVE DIRECTOR

## NOTES

- 1 If space provided is not sufficient, please use a separate sheet of paper
- 2 This form shall be accompanied with a certified copy of the Power of Attorney

FORM ACA 19

(r 18C(2))

THE ANTI-COUNTERFEIT ACT, 2008  
The Anti-Counterfeit Authority

## APPLICATION FOR EXEMPTION BY AN AGENT

The Executive Director,  
The Anti-Counterfeit Authority

1	Name of the Applicant	
2	Telephone number, postal, physical and email addresses of Agent	
3	Condition against which the Agent seeks exemption	
4	Justification for exemption	
6	Additional information (if any)	

Dated this ..... day of ..... 20.....

Name..... Signature .....

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

.....  
EXECUTIVE DIRECTOR

## NOTES;

1. If space provided is not sufficient, please use a separate sheet of paper
2. This form shall be accompanied with a certified copy of the Power of Attorney.

FORM ACA 20

(r. 20A (1))

THE ANTI-COUNTERFEIT ACT, 2008  
The Anti-Counterfeit Authority  
APPLICATION FOR COMPOUNDING OF AN OFFENCE

The Executive Director,  
The Anti-Counterfeit Authority

1	Name of the owner of the seized goods	
2	Telephone number, postal, physical and email addresses of owner	
3	Name of agent if any	
4	Telephone number, postal, physical and email addresses of agent	
5	Description of seized goods	
6	Quantity of seized goods	
7	Retail value of seized goods	
8	Physical location of the premise where the goods were seized	
9	Date and time when the goods were seized	
10	Remarks	

I hereby admit that I have committed the offence of .....  
..... And hereby request the Executive Director to deal with the offence under  
Section 34 A (1) of the Anti-Counterfeit Act.

Dated this ..... day of ..... 20.....

Name of Applicant..... Signature .....

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

EXECUTIVE DIRECTOR

NOTES

- 1 If space provided is not sufficient, please use a separate sheet of paper
- 2 This Form shall be completed in quadruplicate. Upon approval of the application, a copy will be given to the applicant, the original to be filed in the relevant file of the compounding committee, one copy to be given to the Inspector and one copy to be filed in the relevant file
- 3 This application shall be accompanied by the Inventory of Seized Goods and an affidavit in support of the application

FORM ACA 21

(r 20A (2)(a))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Authority

COMPOUNDING ORDER

(1) having admitted that goods seized on  
 (2) at (3) by the Authority from it/his/her (4)  
 are counterfeit and having therein requested the Executive Director to deal with the  
 matter under section 34A of the Act, this is therefore to order that  
 (5) pays a fine of Ksh  
 within a period of from the date of this Order  
 Given under my hand at (6) on this day of 20

Executive Director

NOTES

- 1 Enter name of the person admitting to the offence
- 2 Enter date of seizure
- 3 Indicate place of seizure
- 4 Indicate as appropriate
- 5 Enter name as in note 1 above
- 6 Indicate place of issuance of order

12 The Second Schedule to the principal Regulations is amended in the table of fees by inserting the following new items on fees immediately after item 7—

Amendment of the  
 Second Schedule to  
 L.N 120 of 2010

No	Forms	Purpose	KSh
8	FORM ACA 17	Application for admission as an agent	10,000
9	FORM ACA 18	Application for renewal of admission as an agent	5,000
10	FORM ACA 19	Application for exemption of as an agent	1,000
11	FORM ACA 20	Application for compounding of an offence	5,000

Made on the 30th June, 2021

BETTY MAINA,  
 Cabinet Secretary, Ministry of Industrialization,  
 Trade and Enterprise Development.



LEGAL NOTICE NO. 118 ✓

## THE ANTI-COUNTERFEIT ACT

(No. 13 of 2008)

IN EXERCISE of the powers conferred by Section 37 of the Anti-Counterfeit Act, the Cabinet Secretary for Industrialization, Trade and Enterprise Development makes the following regulations—

THE ANTI-COUNTERFEIT (RECORDATION) REGULATIONS,  
2021

1. These regulations may be cited as the Anti-Counterfeit (Recordation) Regulations, 2021. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Anti-Counterfeit Act, 2008; No. 13 of 2008.

“agent” means a person duly appointed to act on behalf of an intellectual property right owner, and includes a licensee;

“application” means an application made to the Executive Director under the Act;

“certificate of registration” means a certificate relating to protection of intellectual property rights issued under any written law;

“copies” means copies of any document issued under the Act or these Regulations;

“Executive Director” means the Executive Director of the Authority appointed under section 10 of the Act;

“raw materials” means items used as ingredients in the manufacture of goods; and

“registrant” means the owner of an intellectual property right who has recorded the same with the Authority and includes its authorized agent or licensee or assignee.

3. (1) Pursuant to section 34B(3) of the Act, an application to record an intellectual property right relating to goods to be imported into Kenya shall be made by the owner of the intellectual property in the Form ACA1B set out in the First Schedule and accompanied by the fee specified in the Second Schedule to these Regulations. Application for recordation.

(2) Within thirty days of receipt of the application under paragraph (1), the Authority shall, in writing and pursuant to section 34B (2) of the Act, notify the applicant of the approval or denial of the application.

(3) Notwithstanding the provisions of these Regulations, it shall be the responsibility of any person seeking to import goods for commercial purposes to ensure that the intellectual property right relating to the good recorded.

- 4 A person, other than a registrant, seeking to import any goods shall, in addition to any other requirements under any written law, notify the Authority of such intention in the Form ACA 2B set out in the First Schedule and accompanied by the fee specified in the Second Schedule Submission of particulars of imported goods
- 5 (1) Pursuant to section 34B (8) of the Act, where there is a change in ownership of a recorded intellectual property right and the new owner seeks to continue with the recordation, the new owner shall immediately make an application to continue with the recordation in the Form ACA 3B set out in the First Schedule and accompanied by the fee specified in the Second Schedule Change of ownership
- (2) Where the new owner of a recorded intellectual property right seeks to discontinue the recordation, the new owner shall notify the Authority within a period of thirty days of the date of the change in ownership in the Form ACA 4B set out in the First Schedule
- 6 Where there is a change in name of the registrant of a recorded intellectual property right and such registrant wishes to continue with the recordation he shall immediately notify to the Authority of the change of name in Form ACA 5B set out in the First Schedule and accompanied by the fee specified in the Second Schedule Change of name
- 7 Pursuant to section 34B(11) of the Act, an application for renewal of a recordation shall be made to the Authority— Renewal of recordation
- (a) in the Form ACA 6B set out in the First Schedule,
- (b) accompanied by the fee specified in the Second Schedule, and not later than thirty days to the expiration of the current recordation
- 8 Where a recordation of an intellectual property right is cancelled or revoked, the Authority shall notify the registrant within a period of thirty days from the date of such cancellation or revocation Cancellation or revocation of recordation
- 9 The Authority shall maintain a register of all recorded intellectual property rights Register
- 10 Any person seeking to establish the particulars of any recorded intellectual property right shall make an application for an official search in the Form ACA 7B set out in the First Schedule and accompanied by the fee specified in the Second Schedule Search
- 11 Any person seeking copies of any document submitted under these Regulations shall apply to the Authority in the Form ACA 8B set out in the First Schedule and accompanied by the fee specified in the Second Schedule Copies of documents
- 12 (1) The owner of an intellectual property right may appoint an agent to act on his behalf in the recordation of an intellectual property rights or any procedure related thereto Appointment of agents
- (2) An intellectual property rights owner who ordinarily resides outside Kenya or has a principal place of business outside Kenya may be represented by an agent in recordation of an intellectual property rights

(3) The appointment of an agent in the recordation of an intellectual property shall be conducted in accordance with the provisions relation to appointment of an agent under the Anti-Counterfeit Regulations, 2010.

L.N. 126 of 2010.

13. A person who—

False declaration.

- (a) with intent to deceive or mislead, gives any false information in relation to any application made to the Authority;
- (b) removes, adds to, alters, defaces, or renders illegible any information on any form provided under these Regulations in relation to any goods or tools; or
- (c) without authority or reasonable cause alters any entry made under these Regulations,

commits an offence and shall be liable, on conviction, to a fine not exceeding six thousand shillings or to imprisonment for a term not exceeding six months, or both.

14. (1) The forms specified in the First Schedule to these Regulations shall, with such modifications, be used for the purpose indicated therein.

Forms.

(2) Notwithstanding the provision of these Regulations, a document which deviates from the specified form shall not be void by reason of the deviation which does not affect the substance of the document, unless it is calculated to mislead or deceive in which case regulation 13 shall apply.

FIRST SCHEDULE  
FORMS

FORM ACA 1B

(r 3(1))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Authority

APPLICATION TO RECORD INTELLECTUAL PROPERTY RIGHTS

The Executive Director,

The Anti-Counterfeit Authority

1	Name of the owner of the intellectual property right	
2	Telephone number, postal and physical address of owner	
3	Details of the intellectual property rights owner or partners of the association	
4	Name of agent or local distributor if any	
5	Telephone number, postal and physical address of agent or local distributor	
6	Sample or photographic representation of the protected goods	
7	Name and address of each foreign person or business entity authorized or licensed to use the intellectual property right	
8	The identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the intellectual property right abroad	
9	Place of manufacture of goods bearing the recorded trade mark	
11	Remarks	

Dated this

day of

20

Name of Applicant

Signature

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

EXECUTIVE DIRECTOR

NOTES

- 3 If space provided is not sufficient, please use a separate sheet of paper
- 4 This application shall be accompanied by a copy of the certificate of registration certified by the registering authority showing title to be presently in the name of the Applicant,
- 5 The application shall also be accompanied by a fee set out in the Second Schedule to the Act

FORM ACA 2B

(r. 4)

## THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Authority

## INTELLECTUAL PROPERTY RIGHT PARTICULARS FOR IMPORTED GOODS

The Executive Director,

The Anti-Counterfeit Authority

1. Name and address of exporter/consignor	2. Name and address of importer/consignee	3. Name and address of agent
4. Shipment mode (sea, air, etc.)	5. Country of Origin	6. Port of Destination

	Declared HS Code	Product Description	Quantity	Unit of Measure	Brand Name	Name And Address of Owner of Intellectual Property Right	ACA Recordation Reference Number	Remarks
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Dated this ..... day of ..... 20.....

Name.....Signature .....

## NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper
2. This Form shall be accompanied by certified copies of certificates of registration of the intellectual property rights or information which furnishes authorship or creation.

FORM ACA 3B

(r 5(1))

## THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Authority

## APPLICATION TO CONTINUE RECORDATION ON CHANGE OF OWNERSHIP

The Executive Director,

The Anti-Counterfeit Authority

1	Name of the new owner of the intellectual property right	
2	Telephone number, postal and physical address of the new owner of the intellectual property right	
3	Name, telephone number, postal and physical address of the previous owner of the intellectual property right	
4	Effective date of the change of ownership	
5	Description of the time limit, if any, of the rights transferred	
6	Remarks	

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Name of Applicant

Signature

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

EXECUTIVE DIRECTOR

## Notes

- 1 If space provided is not sufficient, please use a separate sheet of paper
- 2 This Form shall be completed and filed with the Authority in quadruplicate
- 3 This application shall be accompanied by a certified copy of the certificate of registration and the prescribed fees

FORM ACA 4B

(r. 5(2))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Authority

NOTICE OF DISCONTINUATION OF RECORDATION

The Executive Director,  
The Anti-Counterfeit Authority

NAIROBI

This is to notify you that..... (*indicate name of the proprietor of the recorded intellectual property right*) holder of recordation number ..... has with effect from the date of this notice discontinued the said recordation.

Dated at Nairobi this..... day of..... 20.....

.....  
*(Name of Proprietor of the Intellectual Property Right)*

*Note:*

The form shall be signed by an authorized officer or agent or representative of the registrant.

FORM ACA 5B

(r. 6)

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Authority

NOTICE OF CHANGE OF NAME

The Executive Director,  
The Anti-Counterfeit Authority

NAIROBI

This is to notify you that.....(*indicate name of the proprietor of the recorded intellectual property rights holder*) has with effect from.....(*indicate the date, month and year*) changed its name to.....(*indicate the new name*).

Dated at Nairobi this..... day of..... 20.....

.....  
*(Name of Proprietor of the Intellectual Property Right)*

*Note:*

1. This form shall be accompanied by a certified copy of the certificate of registration showing title in the new name and the prescribed fees.
2. The form shall be signed by an authorized officer or agent or representative of the proprietor.

FORM ACA 6B

(r 7)

## THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Authority

APPLICATION FOR RENEWAL OF RECORDATION OF INTELLECTUAL  
PROPERTY RIGHT

The Executive Director,

The Anti-Counterfeit Authority

1	Current recordation reference number	
2	Name of the owner of the intellectual property	
3	Telephone number, postal and physical address of owner	
4	Name of agent or local distributor if any	
5	Telephone number, postal and physical address of agent	
6	Description of the recorded intellectual property right	
7	Validity and subsistence of the trademark intellectual property	
8	Remarks	

Dated this

day of

20

Name

Signature

## NOTES

- 1 If space provided is not sufficient, please use a separate sheet of paper
- 2 This Form shall be accompanied by,
  - (a) a status copy of the certificate of registration certified by the registering authority showing the title to be in the name of the Applicant,
  - (b) a statement describing any change of ownership or in the name of the owner and any change of addresses of the owners and places of manufacture,
  - (c) a fee as prescribed in the Second Schedule to the Act



FORM ACA 7B

(r. 10)

ANTI-COUNTERFEIT ACT, 2008  
 Anti-Counterfeit Authority  
 APPLICATION FOR OFFICIAL SEARCH

Executive Director  
 Anti-Counterfeit Authority  
NAIROBI

Kindly supply the undersigned with details of the following recorded intellectual property right:

Nature of Intellectual Property Right	
Name of proprietor	
Nationality of Proprietor	
Postal Address of Proprietor	
Physical Address of the Proprietor	
Local Agent of Proprietor, if any	
Date of Recordation	

.....  
 APPLICANT

FORM ACA 8B

(r. 11)

THE ANTI-COUNTERFEIT ACT, 2008  
 The Anti-Counterfeit Authority  
 APPLICATION FOR COPIES OF DOCUMENTS

The Executive Director,  
 The Anti-Counterfeit Authority

1	Name of the applicant	
2	Telephone number, postal and physical address of the applicant	
3	Record Number	
4	Reason(s) for seeking copies	
5	Remarks	

Dated this.....day of ....., 20.....

Signature.....  
 OWNER/AGENT

## SECOND SCHEDULE

FEES

(r 3, r 4, r 5, r 6, r 7, r 10, r 11)

<i>No</i>	<i>Forms</i>	<i>Purpose</i>	<i>Amount</i> <i>(United States Dollars)</i>
1	FORM ACA 1B	Application to Record intellectual property rights	90 for the first class, 10 for each subsequent class
2	FORM ACA 2B	Submission of Particulars of Imported Goods	20
3	FORM ACA 3B	Change of ownership	20
4	FORM ACA 5B	Change of Name	20
5	FORM ACA 6B	Renewal of Recordation	50
6	FORM ACA 7B	Application for Search	5
7	FORM ACA 8B	Application for copies	0.5 per page

Made on the 30th June, 2021

BETTY MAINA,  
*Cabinet Secretary, Ministry of Industrialization,  
 Trade and Enterprise Development*