

**SUBSIDIARY LEGISLATION**

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THE MERCHANDISE MARKS ACT  
(CAP. 85)

REGULATIONS

*Made under section 18A*

THE MERCHANDISE MARKS REGULATIONS, 2008

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*Regulation*

*Title*

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PART I  
PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Merchandise Marks Regulations, 2008 and shall come into operation on the date of publication in the *Gazette*. Citation
2. In these Regulations unless the context requires otherwise - Interpreta-  
tion Cap  
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- "Act" means the Merchandise Marks Act;
- "Chief Inspector" includes an Inspector appointed under section 2A of the Act;
- "counterfeiting" means without the authority of the owner of any intellectual property right subsisting in Tanzania or elsewhere in respect of protected goods-
- (a) the manufacturing, producing, packaging, repackaging, labelling or making, whether in Tanzania or elsewhere, of any goods whereby those protected goods are imitated in such manner and to such degree that those other goods are identical or substantially similar copies of the protected goods;
  - (b) the manufacturing, producing or making, whether in Tanzania or elsewhere, the subject matter of that intellectual property, or a colourable imitation thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said owner, or any goods manufactured, produced or made under his licence;
  - (c) the manufacturing, producing or making of copies in Tanzania or elsewhere, in violation of authors rights or related rights;
- "counterfeit goods" or "pirated goods" or "offending goods" means goods available as the result of counterfeiting or piracy, and includes any means used for the purposes of counterfeiting or piracy;
- "freezing order" means an order of the court which enables an applicant to have the respondent's assets frozen so that they cannot be dissipated from beyond the jurisdiction of a court to frustrate the final order or judgment.
- "owner" or "rights holder" means a person who is a title holder, a registered or acknowledged intellectual property proprietor or owner, or a person deriving a right from such proprietor to import, export or trade in such property and who has made an application under the Act and these Regulations;

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"piracy" means the illicit, prohibited or unauthorised copying of any intellectual property right on or over goods for the purpose of trade;  
"search order" means a search order obtained from the court for the purposes of these regulations;  
"Task Force" means the Task Force established under regulation 8.

PART II

FUNCTIONS AND POWERS OF CHIEF INSPECTOR

Powers of  
Chief  
Inspector

3. The functions and powers of the Chief Inspector shall be -

- (a) to set the times and places of the sittings of the Chief Inspector with the Task Force;
- (b) to identify and summon or invite any persons to the sittings of the Chief Inspector and the Task Force;
- (c) to determine the form and manner in which applications, complaints and submissions shall be made and evidence given to the Chief Inspector, and in particular, whether such complaints, submissions and evidence shall be given oral or in writing;
- (d) to attend oral examination or cross-examination of persons who made submissions or given evidence in writing;
- (e) to admit or exclude any person to or from the sittings of the Chief Inspector and the Task Force; and
- (f) to deal with any other matters as appear to the Chief Inspector to be necessary or expedient for the proper conduct of his business.

Power to  
investigate

4.-(1) The Chief Inspector or an inspector may conduct an investigation on any breach of the provisions of the Act, and may request the assistance of a police officer or any public officer.

(2) The Chief Inspector or inspector may detain or seize any goods which he reasonably suspects to be counterfeit goods.

(3) A receipt shall be issued in respect goods detained or seized under this Regulation in accordance with the provisions of Part IV.

(4) Any goods detained under this regulation shall be disposed of in accordance with the procedure set out in Part VI.

5.-(1) The Chief Inspector may conduct or cause to be conducted a public enquiry in respect of any serious breach of the provisions of the Act or these Regulations.

Public  
enquiry

(2) For the purposes of a public enquiry under these Regulations the Chief Inspector may summon any person to give evidence before the Task Force on the date and place stipulated in the invitation or summons.

(3) A summons for the purposes of this regulation shall be issued on Form A as set out in the First Schedule to these Regulations.

(4) Any person who volunteers or is summoned to appear before the Task Force in response to the public enquiry shall give an oath or affirmation whether in writing or verbally.

(5) An oath or affirmation in writing shall be made on Form B as set out in the First Schedule to these Regulations.

(6) It shall be an offence for any witness in proceedings of a public enquiry. to mislead or tell lies to the Task Force.

(7) Any person who utters false or misleading testimony commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a tenn not exceeding one year, or both.

6.-(1) The Chief Inspector may delegate in writing any of his functions to a public officer or public institution subject to his directions as he may think fit.

Delegation

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(2) The delegation conferred under this regulation shall not preclude the Chief Inspector from exercising the powers so delegated.

Zonal  
offices

7. The Minister may, on the advice of the Chief Inspector establish zonal offices in such places as he may think appropriate for the purposes of the better implementation of the Act.

PART III

APPOINTMENT AND ROLE OF INTERDEPARTMENTAL TASK FORCE

Members  
of Task  
Force

8.-(1) There is established a Task Force to be known as the Interdepartmental Task Force.

(2) The Task Force shall consist of the following members appointed by the Minister—

- (a) one representative from the office of the Attorney General's Chambers;
- (b) one representative from the office of Tanzania Revenue Authority;
- (c) one representative from Police Force;
- (d) one representative from Tanzania Bureau of Standards;
- (e) one representative from Foods and Drugs Authority; and
- (f) any other representative from Public officer.

(3) The Minister may, by notice published in the *Gazette* and in consultation with the Chief Inspector and the chief executive officer of any public institution, appoint number of persons as he may consider necessary to be members of the Task Force.

(4) Every member of the Task Force shall hold office upon such terms, rates and manner as the Minister may direct in the instrument of appointment.



(5) A Member appointed under sub-regulation (1), shall have full mandate to make decisions at the meetings of the Task Force without seeking further authority, clarification, permit or consent of the institution from which he hails.

(6) Any Task force or similar body constituted or formed prior to the commencement of these Regulations shall continue to exist until the expiry of the term of each member respectively and in the carrying out his duties shall comply with these Regulations.

9.-(1) Subject to the provisions of the Act and these Regulations the Task Force shall set out its own rules of procedure for the conduct of its meetings, and such rules shall be published in the *Gazette* and at least in English and Kiswahili widely circulated in Tanzania.

Proceedings and rules of procedure for Task Force Members

(2) The Task Force shall meet at least once in every three months but may convene a meeting at any time when need arises to transact the business of the Task Force.

10. Any matter or thing done by the Chief Inspector or a member of the Task Force or any officer, employee or agent of the Chief Inspector shall render him liable personally to any action, claim or demand if the matter or thing is done *bona fide* in the execution of the functions or exercise of the powers or duties of the Chief Inspector under these Regulations.

Immunity of members of Task Force

11.-(1) The Task Force shall ensure-

- (a) that all officers of such institutions in the respective zones, regions, districts and stations are made aware and are responsible for the implementation of the decisions of the Chief Inspector in their respective areas of jurisdiction;
- (b) that is aware of all provisions of the laws of such institutions that complement or conflict with the provisions of the Act, and any manner in which such conflict can be addressed in order that the powers of the Chief Inspector are not compromised or rendered nugatory;
- (c) that the decisions of the Chief Inspector as advised by the Task Force are not fettered or hindered but are facilitated

Mandate of representatives of institutions and their Chief Executive Officers

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and effectively carried out by their respective zonal, regional and district officers-in-charge; and

- (d) that the officer assigned to the Task Force is not in any manner fettered or hindered in the making and execution of the orders of the Chief Inspector.

(2) In the event that an institution represented in the Task Force violates the provisions of the Act or these Regulations, the Chief Inspector may notify the Minister and the Minister responsible for the institution or the chief executive of the institution of such violation, and the Minister after due consultation with the Minister responsible or the chief executive officer directs the Chief Inspector on the appropriate action to terminate the violation and shall—

- (a) give that institution or its chief executive officer a thirty days notice to show cause why the Chief inspector should not issue a notice to the Minister; and
- (b) if the Chief Inspector is satisfied of the cause provided to him he shall seek to remove such contraventions impeding the implementation of the Act and these Regulations with such institution or its chief executive officer or an officer within ninety days from the date of receiving the letter from such institution or its chief executive officer or an officer.

PART IV

SUMMARY PROCEEDINGS BEFORE CHIEF INSPECTOR

Application  
to  
Chief  
Inspector

12.—(1) Any person who has reasonable grounds to suspect an importation or the exportation of counterfeit marks or pirated copies in violation of his intellectual property rights, or any offending goods may make an application in writing to the Chief Inspector which shall provide the following particulars —

- (a) the grounds for seeking the suspension of the release of the offending goods from Customs control;
- (b) the names of the suspected counterfeiters or infringers;
- (c) the possible destinations from or to which the offending goods are consigned;

- (d) the reliable information as to the offender's or infringer's residence or address, the place of storage of the goods, or location of the infringer's factory or business premises;
- (e) adequate facts evidencing a prima facie case of infringement; and
- (t) a sufficiently detailed description of the offending good to make them readily recognisable by the proper officer of Customs Department.

(2) The information required under sub-regulation (1) shall be substantially as prescribed on Form C as set out in the First Schedule.

13. The Chief Inspector may require the person who submits an application under Regulation 12 to provide adequate security or to subscribe to an undertaking or bond to cover any costs or liability arising from claims in the event the goods are found not to be offending goods or where proceedings initiated under this Part are discontinued or where there is an abuse of the process by the applicant.

Security  
by  
applicant

14.-(1) The Chief Inspector may summon any person as a witness before him or at the sitting of the Task Force for the purpose of examining him and may require him to produce documents relevant to the proceedings initiated in an application filed under this Part.

Attendance  
by  
witnesses  
and  
production  
of  
documents

(2) The expenses of the attendance of the witness in proceedings commenced under this Part shall be borne by the applicant upon certification by the Chief Inspector.

(3) A summons to a witness shall be as set out on Form J in the First Schedule and shall set the time and place of the proceedings where the witness is required to testify.

(4) It shall be an offence for a witness to mislead or tell lies in proceedings, and the Chief Inspector may arrest or cause to be arrested and prosecute or cause to be prosecuted in the District Court any person for deliberately testifying falsely.

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(5) Any person who misleads or gives false statement commits an offence and upon conviction shall be liable to a fine not exceeding one hundred thousand shillings imprisonment for a term of two years or both.

Immunity and privileges of witnesses

15. A witness in proceedings before the Chief Inspector or the Task Force shall be entitled to the same immunities and privileges as a witness in the District Court.

Notice of suspension

16.-(1) The Chief Inspector may request the Commissioner of Customs to suspend the release of goods from Customs control which are suspected to be counterfeit goods upon receipt of an application made under Regulation 12.

(2) Notice of the request made pursuant to subregulation (1) shall be delivered or sent to the owner of the goods to be suspended.

(3) The request for suspension under this Regulation shall be made on Form C set out in the First Schedule.

(4) The owner of the goods shall be afforded an opportunity to respond to the notification within three working days of receipt of the notice.

Suspension of release of counterfeit goods from Customs control

17.-(1) The event the owner of the goods in respect of which notice of suspension of release has been issued does not respond to the notice of suspension or fails to respond to the satisfaction of the chief Inspector, the Chief Inspector shall issue a suspension order addressed to the Commissioner of Customs with copy to the owner of the goods.

(2) Goods in respect of which a suspension order has been issued shall remain under customs control and shall be disposed of in accordance with the provisions of this Part and Part X.

(3) A suspension order shall be made on Form D as set out in the First Schedule to these Regulations.

Detention of goods located outside Customs area

18.-(1) In the event the offending goods in respect of which an application has been made under Regulation 12 are not in a Customs area the Chief Inspector may issue an order of detention and shall deliver or send a copy to the owner of the goods.

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*G.N. No. 89 (contd.)*

(2) Goods detained under this Regulation shall be secured in a Government warehouse or other place at the expense of the applicant

(3) The order of detention made under this regulation shall be on Form E set out in the First Schedule.

(4) Subject to an *ex parte* search order obtained from the District Court upon application, the Chief Inspector or the right holder or applicant, may enter and search the premises suspected to contain counterfeit goods, and may co-opt the assistance of a court broker and the police or private security firm.

(5) Goods detained under this Regulation shall be released to the owner upon satisfactory explanation or shall be disposed of in accordance with the provisions of this Part under compoundment or Part VI.

Inspection  
of goods  
detained

19. The Chief Inspector may, without prejudice to the protection of confidential information, give the right holder or applicant sufficient opportunity to inspect any goods detained in a Customs area or Government warehouse or other place in order to substantiate the right holder's or applicant's or owner's claim.

Release of  
goods  
where no  
relief  
granted

20. Goods detained under the provisions of this Part shall be released to the owner where it is determined by the Chief Inspector that the applicant has not produced sufficient proof within ten working days that such goods are offending goods.

Request  
for  
compound-  
ment

21.-(1) The owner of offending goods may request in writing the Chief Inspector for a compoundment of the offence where such owner admits his offence.

(2) A formal request for compoundment shall be made out on Form G which is set out in the First Schedule.

Settlement  
by  
compound-  
ment

22.-(1) The Chief Inspector, or an Inspector duly authorised by the chief Inspector, may make a compoundment order and impose a fine with or without forfeiture of the goods, and may order the destruction of the goods or disposal in accordance with Part X.

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*G.N. No. 89 (contd.)*

(2) A compoundment order under this Regulation shall be in writing and shall not be liable to appeal in any court.

(3) The compoundment order shall be made on Form H set out in the First Schedule.

Frivolous  
applica-  
tions

23. Where it is deemed by the Chief Inspector that an application made under Regulation 12 has been made frivolously or with an improper motive, the Chief Inspector may order the applicant to pay the owner or consignee or consignor of the goods appropriate compensation for any harm or loss occasioned through the wrongful detention of the goods.

PART V

ROLE OF PUBLIC INSTITUTIONS AND COST OF HANDLING COUNTERFEIT  
GOODS

Role of  
institutions  
represented  
in Task  
Force

24.-(1) The role of institutions represented in the Task Force shall make arrangements in their respective mandates to ensure that—

- (a) all officers in the zones, regions, districts and stations are acquainted and are responsible for the implementation of the decisions of the Chief Inspector in their respective jurisdiction;
- (b) the Task Force members are acquainted with the provisions of the laws of the institutions that complement or conflict with the provisions of the Act, and with the manner in which such conflict can be addressed in order that the powers of the Chief Inspector under the Act and these Regulations are not impaired;
- (c) the decision of the Chief Inspector as advised by the Task force is not fettered or hindered but is facilitated and effectively carried out by their respective zonal, regional, district and station commanding officers; and
- (d) the officer assigned to be a member of the Task Force is not in any manner fettered or hindered in the making and execution of the orders of the Chief Inspector.

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*G.N. No. 89 (contd.)*

25.-(1) It shall be the duty of the institutions and their respective chief executive officers to ensure that the functions of the Chief Inspector and the Task Force are facilitated and not frustrated.

Duty of  
Chief  
Executive  
Officer of  
institutions  
represented

(2) In the event that an institution or its chief executive officer or any of its officers is acting contrary to the provisions of the Act or these Regulations, the Minister may notify the Minister and the Minister responsible for the institution or the chief executive officer of the institution about such behaviour, and the Minister after due consultation with the Minister responsible for the institution or its chief executive officer may direct the Chief Inspector on the appropriate action to terminate such prejudicial behaviour:

Provided the Chief Inspector shall give that institution or its chief executive officer a thirty days notice to show cause why he should not issue the notice to the Minister.

(3) Where the Chief Inspector is satisfied that a breach is being committed, he shall seek to rectify the causes impeding the implementation of the Act or these Regulations within ninety days from the date of the notification sent under subregulation (2).

26. On receipt of submissions made to the Task Force by an applicant under these Regulations, the Chief Inspector shall make a summary of the relevant facts, issues and the complaint and submit the same to each member of the Task Force.

Submissions  
to Task  
Force

27. Each person representing an institution in the Task Force, on receipt of the summary of the submissions from the Chief Inspector shall within ten days prepare and deliver his appropriate advice by a written memorandum to the Chief Inspector with particular reference to the requirements of the laws and procedures governing his respective institution as regards goods placed in the market.

Advice to  
Chief  
Inspector

28.-(1) The memorandum of a member of the Task Force drawn pursuant to Regulation 28 shall be signed by him and shall state-

Content  
of advice  
to Chief  
Inspector

(a) the name of the institution represented by the member;

(b) the relevant provisions of the law being addressed;

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(c) the action, if any, already taken by the institution as regards the issues to be addressed; and

(d) the member's advice on the action to be taken by the Chief Inspector.

(2) The advice of the members of the Task Force shall guide but not fetter the discretion of the Chief Inspector to make the appropriate decision on the issues the subject of the advice by members.

Personal liability of public officer

29. Any Customs official or other public officer who without probable and reasonable cause hinders the inspection, detention or seizure by the Chief Inspector of goods suspected to be offending good shall be personally be liable for prosecution as an accomplice under the Act.

PART VI

PROCEDURE FOR SEIZURE AND DETENTION OF COUNTERFEIT GOODS

Forcible entry

30.-(1) The Chief Inspector may, upon information received enter and search any premises reasonably suspected to contain offending goods and may, if necessary use force to obtain access to such premises.

(2) Whenever the Chief Inspector contemplates entering premises to search for offending goods, shall notify the local district police commander who shall provide adequate security, with copies to the regional police commander as well as the Inspector General of Police.

Seizure or detention and storage of counterfeit goods

31.-(1) Any goods found upon a search by the Inspector to be offending goods shall be liable to detention or seizure and shall be stored either in a Customs in respect of goods in Customs areas, or in a government warehouse, or in any other case, in such private premises or godown or retail shops as the Chief Inspector may determine as a proper place facility for storage.

(2) Such facility shall be sealed until such order for the disposal or destruction of the detained goods is issued in accordance with the provisions of these Regulations.



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(3) A receipt shall be issued in respect of any goods detained or seized on Form I as set out in the First Schedule

(4) The owner of the goods seized or detain may submit a claim for the release of the goods, or may request for compoundment if he admits the offence in writing.

32. Whenever any goods are seized or detained under these Regulations, notice shall be communicated to the local district police for information.

Notice to police on seizure or detention

33.-(1) The Commissioner of Customs shall, in respect of offending goods situated in a Customs area ensure that the freight agents or owner of the goods detained or seized under these Regulations subscribe to an indemnity bond to indemnify the Commissioner and the Chief Inspector from any costs relating to the inspection, seizure and other claims or charges in the event such goods are found not to infringe the provisions of the Act and these Regulations.

Indemnity by freight agents

(2) The indemnity bond under this Regulation shall be made out on Form J as set out in the First Schedule.

34. The owner of goods detained or seized as suspected offending goods may, within one month of the notice of detention or seizure put up a claim in writing for their restoration by the Chief Inspector.

Right to challenge seizure or detention

(2) If no claim is made within the period stipulated under this Regulation, the goods shall be forfeited and shall be disposed of as the Chief Inspector may determine.

PART VII

SUBMISSIONS TO CHIEF INSPECTOR

35.-(1). Upon an application being filed with the Chief Inspector concerning suspected counterfeit goods on payment of the prescribed fees, the Chief Inspector shall give notice of such reference to the owner with a request to such owner to make a submission in response to the application.

Fees on presenting submission

(2) Appropriate fees shall be paid of the application in the manner set out in the Second Schedule.

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*G.N. No. 89 (contd.)*

(3) The Minister may on the advice of the Chief Inspector vary the fees payable under this Regulation by notice published in the *Gazette*.

Contents  
of  
submission

36.—(1) Every submission made to the Chief Inspector under these Regulations shall be in writing signed by the person making it or by his agent and shall contain such particulars relevant to the subject matter of the submission.

(2) The submission shall include the list of names and addresses of the witnesses whom the applicant proposes to call in support of his claim and a written statement of the evidence which it is proposed to be given by each of the witnesses.

(3) The submission shall provide—

- (a) a detailed description of the class of goods identified by reference to the Official Import List issued by the authority of the Minister for finance and the Tanzania Revenue Authority;
- (b) the broad grounds on which the submission relies;
- (c) the particular reasons for or against—
  - (i) a restriction on sale order;
  - (ii) a restriction on importation order;
  - (iii) a seizure or disposal order; or
  - (iv) any other orders stated therein as the case may require;
- (d) the standard or alternative forms of proof of origin of goods suitable in relation to the goods to which the submission relates;
- (e) the manner in which an indication of origin, trade mark or trade description should be borne by the goods if not counterfeits to which the submission relates;
- (t) where the submission relates to the making of a restriction on sale order in respect of goods, whether such goods should bear an indication of origin, trade mark, or trade description at the time of exposure for sale wholesale;

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- (g) whether a restriction order if made is extend—
  - (i) to samples of such goods; and
  - (ii) to blends and mixtures consisting of or containing such goods.

37. Every submission and statement of evidence furnished to the Chief Inspector under this Part shall be in typescript or print of not less than a font of twelve points on paper of size A4 bound, page numbered and furnished in quintuplicate with the front cover citing in bold the nature of the submission and the names of the party with his postal address, telephone, fax and e-mail contacts if any.

Format of submission

38.—(1) On receipt of a submission and payment of the appropriate fees under Regulation 38, the Chief Inspector shall publish in the *Gazette* and any news paper or media as he may think appropriate, a preliminary notice of the reference of the application to the Chief Inspector stating the nature of the application and the intention to hold a public inquiry into the application pursuant to these Regulations.

Public notice of submission

(2) The preliminary notice shall state the reference of the question to the Chief Inspector, the subject-matter of the reference and the intention to hold an inquiry on the matter under the reference.

39.—(1) After the publication of the notice in terms of Regulation 39, any person who desires to be heard at the inquiry referred to in the notice and who claims to have a substantial interest in the subject-matter of the inquiry may apply to the Chief Inspector for leave to make a submission stating the manner in which he claims to be so interested.

Leave, to defend interest

(2) On receipt of an application for leave under subregulation (1), if it appears to the Chief Inspector that the person applying to be heard has a patent and substantial interest in the subject-matter of the inquiry, he shall invite such person to make a submission in relation to the subject matter of the inquiry in accordance with these Regulations.

40. At least fourteen clear days in advance, the Chief Inspector shall publish in the *Gazette* and in such other Kiswahili or English newspapers and any other media with wide circulation as he may choose, notice of the date, hour and place fixed for the commencement of the holding of the inquiry.

Notice of time and venue of hearing

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| Evidence                 | 41. Except by special leave of the Chief Inspector, no witness may be called or give evidence in an inquiry unless a statement of the evidence which he proposes to give has been previously furnished to the Chief Inspector in accordance with the provisions of these Regulations.   |
| Inspection of documents  | 42. Every person who for the purpose of an inquiry furnishes any document to the Chief Inspector in accordance with these Regulations, may at any time during office hours inspect such documents furnished by himself and any other document furnished to the Chief Inspector for the purpose of the inquiry.  |
| Limitation of inspection | 43.—(1) The Chief Inspector may on the application of any person by whom a document is furnished in accordance with these Regulations, or wherever he deems appropriate without such application, may by order limit the inspection of a document so furnished or any specified part or parts of such document (called a limitation order).<br><br>(2) Where the Chief Inspector makes a limitation order in respect of any document, such document or part to which the order relates shall not be inspected by any person other than the person who furnished the document, his lawful appointed agent, or personal representative, without the special leave of the Chief Inspector. |
| Summons to attend        | 44.—(1) The Inspector shall issue a summons to each person whose attendance is required for the purpose of hearing any evidence tendered in accordance with these Regulations.<br><br>(2) Such summons shall be delivered or posted to the address of such person and communicated to him at least four days before the hearing.<br><br>(3) The summons may be dispensed with in respect of persons who are in attendance before the Chief Inspector and who receive verbal notice of the date on which they are required to give evidence.   |
| Representation           | 45. The Chief Inspector shall permit a legal counsel, an advocate or other person to appear at an inquiry on behalf of any person who has made a submission or has been granted leave to be heard by the Chief Inspector, and such legal counsel, advocate or other person so appearing may examine the person for whom he appears or any witness called by him.  |

46. The Chief Inspector may, on the request of any person who makes a submission or tenders evidence before the Chief Inspector in relation to an inquiry under these Regulations, exclude all or any person from the whole or part of such inquiry whether the persons so excluded is or is not interested in such inquiry.

Exclusion of certain persons

47. Fines shall be payable in accordance with the Second Schedule after a final decision is made by the Chief Inspector after receiving appropriate advice from the Task Force in relation to offences under the provisions of the Act or these Regulations, including the refusal to comply with any final order issued by the Chief Inspector and continuing offences after such final order of the chief Inspector.

Final decision

PART VIII  
SANCTIONS AND PAYMENT OF FINES

48. Fines under these Regulations shall be paid in accordance with the scales laid down in the Second Schedule.

Quantum of fines  
Second Schedule

49.-(1) The Task Force shall advise the Chief Inspector on the method of calculating the suitable fine for each particular case, namely an amount commensurate with the harm or potential harm and the object of deterring such offences.

Method of calculation of fines

(2) In addition or in the alternative to a fine, the offender may have the offending goods confiscated and destroyed at his expense.

50. Notwithstanding anything contained in these Regulations, the Chief Inspector may commit a suspected offender to the Director of Public Prosecutions for criminal prosecution for importing, exporting or dealing in offending goods which endanger the health and public safety of the inhabitants of Tanzania.

Sanctions Reference to DPP

PART IX  
APPEALS

51. An appeal from the final decision of the Chief Inspector, other than arising from a compoundment order, shall lie to the Fair Competition Tribunal.

Appeal to Fair Competition Tribunal

*Merchandise Marks*

G.N. No. 89 (contd.)

PART X

STORAGE AND DISPOSAL OF UNCLAIMED COUNTERFEIT GOODS

Power of  
Customs  
over  
counter-  
feits

52. Customs officials may seize all goods imported or exported in contravention of the provisions of the Act, including goods imported or exported bearing counterfeit trade marks, and any other goods that infringe the intellectual property rights of any person that are recognised under the Act or any other written law.

Transit  
sheds,  
bonded  
warehouses  
and cost  
of storage

53.—(1) Any goods seized or detained under the provisions of the Act or these Regulations shall be stored in a Customs warehouse, transit shed, government warehouse or other suitable place at the expense and risk of the Applicant or Rights Holder.

(2) The cost of storage of goods seized or detained shall be secured against the indemnity bond which the Applicant or Rights holder shall subscribe under these Regulations.

Disposal  
period

54.—(1) The importer, exporter or owner shall have the right to appeal within fourteen (14) days against the seizure or detention order of the Chief Inspector or other public official under these Regulations.

(2) The Chief Inspector shall be entitled to dispose of any goods seized or detained under these Regulations after the period stipulated in subregulation (1).

Disposal  
orders

55.—(1) Where goods have been seized and—

- (a) a finding is made that the goods offend the Act and no appeal has been preferred within fourteen (14) days from the final order of the Chief Inspector; or
- (b) where no claimant shows up, or where the goods are abandoned and are unclaimed before a determination whether any property right has been infringed under the Act; or
- (c) any person named as the importer, exporter or owner of the goods fails to respond to a summons issued and sent by the Chief inspector,

- (d) the Chief Inspector after thirty days of the final order shall issue a disposal order which he shall deliver to the Customs Department or other relevant public institution under whose custody the seized goods are stored.
- (2) Subject to sub-regulation (1), the Chief Inspector may–
  - (a) issue a disposal order immediately in respect of perishable goods; and
  - (b) dispose goods immediately after the final order where both the Applicant and the importer or exporter or owner or Rights Holder consent to the disposal to avoid or minimize costs relating to storage and safe custody of the goods.
- (3) A disposal order made by the Chief Inspector shall specify whether–
  - (a) the goods are to be destroyed and by what method;
  - (b) the goods are to be given to a charitable institution and by what method;
  - (c) a specified measure of samples can be taken and kept by the Customs or other public institution for judicial purposes.
- (4) A disposal order shall be made out on Form K as set out in the First Schedule.

56. In all successful applications, the costs relating to inspection, seizure and other charges shall be levied on the freight agent who acts for the counterfeit trader or infringer of the Act unless where the application proves to be unjustified, the Applicant or Rights Holder automatically becomes liable for these costs, such as counterfeit medicines or motor vehicle spare parts, or if the intercepted quantity of counterfeit goods is so large that it creates a market distortion.

Liability  
of  
agents

**Merchandise Marks**

G.N. No. 89 (contd.)

FIRST SCHEDULE

FORM A

OATH OR AFFIRMATION

*Under Regulation 5(5)*

I, .....adult, of Post Office  
Box.....  
do hereby swear/affirm that I shall give a true testimony before the Chief Inspector and  
the Task Force to the best of my knowledge and my ability. So help me God.

Signed  
Date  
Before me

.....  
Chief Inspector/Inspector/Member of Task Force

*Caution: Tendering false evidence shall render the person so doing liable to prosecution  
under the Oaths and Statutory Declarations Act, Cap. 86 R.E.*

FORM B

INFORMATION REQUIRED OF APPLICANT

*Under Regulation 12(2)*

I,..... of P.O.  
Box .....am the applicant in the matter of suspected  
breach of the Merchandise Marks Act, that is to say, (state the subject- matter of the  
alleged breach and your interest, if any) .....

The following are the relevant particulars

- (a) Detailed description of the goods suspected to be counterfeited
- (b) Grounds for an order to suspend release of such goods from Customs area /  
bonded warehouse/Government warehouse/other storage place/factory
- (c) Physical location of warehouse/factory
- (d) Names of suspected infringer/offender/counterfeiter as well as his/their  
business and residential address
- (e) Possible destination of the goods if known
- (f) Other relevant details

The above particulars are to true to the best of my knowledge and belief Signed this.  
.....day of.....2007

APPLICANT SIGNATURE

.....



*Merchandise Marks*

G.N. No. 89 (contd.)

FORM C

REQUEST OF CHIEF INSPECTOR TO SUSPEND RELEASE OF GOODS  
FROM CUSTOMS AREA/GOVERNMENT WAREHOUSE

*Under Regulation 16(3)*

To: Commissioner of Customs and Excise\*/Public officer of Government Warehouse  
At (state locality)

This is to request you to suspend the release of the following goods which we have reason to believe to be counterfeit/offending goods in terms of the Merchandise Marks Act (Cap 85 of the Laws), that is to say:

.....  
.....

The above stated goods are being investigated and a Notice of Seizure/ Detention will be/has been issued for further legal action. The goods should remain in your possession until their disposal is ordered in accordance with law. Dated at..... this..... day of..... 200..

CHIEF INSPECTOR OF MERCHANDISE MARKS  
Copy to (Owner of Goods)

FORM D

ORDER OF SUSPENSION OF RELEASE OF GOODS

*Under Regulation 17(3)*

The goods specified hereunder shall not be released to their owner(s) or consignee(s) until the proceedings in relation thereto are determined and completed. All enquiries should be addressed to the Chief Inspector of Trade Marks or his local representative.

DESCRIPTION OF GOODS

Marks and numbers of packages  
Nature and quantity of goods  
Owner/consignor Consignee

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

COMMISSIONER OF CUSTOMS & EXCISE/PUBLIC OFFICER  
To: Chief Inspector/Inspector

*Merchandise Marks*

G.N. No. 89 (contd.)

FORM E

ORDER OF DETENTION OF GOODS

*Under Regulation 18 (3)*

The goods specified hereunder are detained forthwith and shall remain under the custody of the undersigned until further notice

DESCRIPTION OF GOODS

Marks and numbers of packages  
Nature and quantity of goods  
Owner/consignor Consignee  
Dated this.....day of .....20.....

FORM F

REQUEST FOR COMPOUNDMENT

*Under Regulation 21 (3)*

To the Chief Inspector of Merchandise Marks at.....  
I, .....of P.O. Box..... am concerned with a  
contravention of the Merchandise Marks Act, that is to say.....  
I admit being guilty of the offence and I hereby request the Chief Inspector to compound  
the offence under the Act/the Regulations I understand that any order made by the  
Inspector is final and is not subject to appeal. Dated this .....day of.....20.....

FORM G

ORDER OF COMPOUNDMENT

*Under Regulation 22 (3)*

To.....  
of P.O. Box.....  
I, .....Chief Inspector of Merchandise Marks make the following  
order in respect of the offence to which you have pleaded guilty, that is to say.....  
Dated at.....this.....day of .....20.....

CHIEF INSPECTOR OF MERCHANDISE MARKS

Merchandise Marks

G.N. No. 89 (contd.)

FORM I

NOTICE OF SEIZURE  
Under Regulation 31 (3)

To: .....  
P.O. Box.....  
.....

The following goods are seized as goods suspected to be counterfeit goods/offending goods under the provisions of the Merchandise Marks Act, that is to say:

.....  
Any claim against the seizure should be submitted in writing to the Chief Inspector within thirty days of the seizure. In the event of your failure to file a claim within the time stipulated herein the chief Inspector may dispose of the above goods as he may think fit under the law.

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

CHIEF INSPECTOR/INSPECTOR OF MERCHANDISE MARKS

FORM J

SUMMONS  
Under Regulation 14(3)

Date.....  
To.....  
P.O. Box.....  
.....

You are hereby required to appear the Chief Inspector/Inspector/Task Force in person on the .....day of .....200..... at .....o'clock at .....(name of locality) without fail to give testimony and to produce the documents you propose to tender in support of your testimony. You should also produce the following documents and objects in your possession or power, that is to say-

.....  
.....  
.....

Chief Inspector/Inspector

Merchandise Marks

G.N. No. 89 (contd.)

FORM J

INDEMNITY BOND  
Under Regulation 33

Know all men by these presents that  
we.....  
of .....  
and.....  
of.....  
are held and firmly bound unto the Chief Inspector and in the sum of  
.....shillings  
to be paid to the Chief Inspector for which payment well and truly to be made we bind  
ourselves and every of us jointly and severally for and in the whole our heirs, executors,  
administrators and assigns and every of them firmly by these presents.

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

Whereas the above  
bounden.....  
have declared the undermentioned goods, that is to say .....  
for exportation/entry for home consumption/warehousing\* at.....

Now the condition of this obligation is that if the said goods are stored at  
.....  
pending the order of the Chief Inspector for clearance or disposal under the Merchandise  
Marks Act! the Merchandise Regulations, and until all costs of storage and of safe  
keeping shall be borne in full by the above bounden, then this obligation shall be void,  
but otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered by the above  
bounden.....  
in the presence  
of..... of .....

Approved:

.....  
CHIEF INSPECTOR OF MERCHANDISE MARKS

*Merchandise Marks*

*G.N. No. 89 (contd.)*

FORM K

DISPOSAL ORDER

*Under Regulation 53(4)*

Whereas the following goods have been seized/detained or lie abandoned, and no claim has been submitted or lawful order made for their recovery by or restoration to the owner or other person, IT IS HEREBY ORDERED that the said goods be disposed of in the following manner, that is to say:

- (1) Description and quantity of goods
- (2) Mode of destruction of the goods
- (3) Samples to be taken and retained

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

.....  
Chief Inspector of Merchandise Marks

SECOND SCHEDULE

SCALE OF FEES AND FINES

*Under Regulation 48*

Compoundment fees shall be determined by the Chief Inspector but shall not exceed the sum of shillings five (5) million for any single case or compoundment.

Dar es Salaam,  
30<sup>th</sup> May, 2008

MARY M. NAGU,  
*Minister for Industry, Trade and  
Marketing*