

Taiwan's Trademark Act Overview and cases to learn from

Article 95 - Penalty for trademark or collective trademark infringement

Any person who commits any of the following acts, in the course of trade and without the consent of the proprietor of a registered trademark or collective trademark, shall be liable to imprisonment for a period not exceeding three years and/or a fine not exceeding NT\$200,000:

- (1) Using a trademark which is identical with the registered trademark or collective trademark in relation to goods or services which are identical with those for which it is registered;
- (2) Using a trademark which is identical with the registered trademark or collective trademark and used in relation to goods or services similar to those for which the registered trademark or collective trademark is designated, and hence there exists a likelihood of confusion to relevant consumers; or
- (3) Using a trademark which is similar to the registered trademark or collective trademark and used in relation to goods or services identical with or similar to those for which the registered trademark or collective trademark is designated, and hence there exists a likelihood of confusion to relevant consumers.

Article 96 - Penalty for certification mark infringement

Any person who, in the course of trade and without the consent of the proprietor of a registered certification mark, uses a mark which is identical with or similar to the registered certification mark and used in relation to goods or services identical with or similar to those for which the registered certification mark is designated, and hence is likely to mislead consumers shall be liable to imprisonment for a period not exceeding three years and/or a fine not exceeding NT\$200,000.

Penalties referred to in the preceding paragraph shall also apply to any person who sells or, due to an intent to sell, manufactures, possesses, displays labels, packaging, containers, or other articles to which a sign identical with or similar to another person's registered certification mark is applied, knowing that such articles would likely infringe upon rights of such certification mark as prescribed in the preceding paragraph.

Article 97 - Penalty for sale or intent of sale of infringing article

Any person who knowingly sells or, due to an intent to sell, possesses, displays, exports, or imports another person's goods referred to in the preceding two articles shall be liable to imprisonment for a period not exceeding one year and/or a fine not exceeding NT\$50,000; same penalties shall also apply to acts performed through electronic media or the Internet.

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Case Story 1 – Police searched Indonesian migrant workers selling counterfeit goods and found that a woman named Ami, an Indonesian migrant worker, had come to Taiwan many years ago to work. Her husband Ali, far away in Indonesia, also came to Taiwan to work alongside Ami because he missed her. They lived together and gave birth to a daughter called Xiaoli, who was lovely but also increased family expenses. One day, Ami got a hunch: she knew that many good friends, who were also from Indonesia, were fond of brand-name products. So, she went online to purchase counterfeit CHANEL perfumes from the Chinese online platform Tao*, where counterfeit goods such as CASIO watches, ADIDAS sportswear, etc., were sold. She then resold those items through her personal Facebook account and LINE groups to fellow Indonesians in Taiwan.

However, in Taiwan it is illegal to sell counterfeit products. So, the police tracked down Ami and searched her home where they found many counterfeit perfumes, watches, etc., over 400 items in total, with an infringing market value of about NT\$ 2 million.

Gentle reminder: Recently it has been found that migrant workers in Taiwan in need of money import counterfeit goods and sell them to people in Taiwan. Selling counterfeit goods in Taiwan is a violation of the Trademark Act and can be penalized by fixed-term imprisonment of up to a year, a fine of up to NT\$ 50,000, and a large sum of compensation to be paid.

Related law: Article 97 of the Trademark Act Article 97: “Any person who knowingly sells or, due to an intent to sell, possesses, displays, exports, or imports another person’s goods referred to in the preceding two articles shall be liable to imprisonment for a period not exceeding one year and/or a fine not exceeding NT\$50,000; same penalties shall also apply to acts performed through electronic media or the Internet.”

1. How can I avoid violating the Trademark Act?

Answer: Only sell genuine products. If you cannot confirm they are genuine, don't sell them, as you may be violating the law.

2. How can I check whether products are genuine?

Answer:

- (1) First, check the license of the seller. If the manufacturer cannot show a legal authorization certificate, then don't purchase from them.
- (2) Judge from the price. Products sold for prices significantly below the original market price are very likely to be counterfeit goods.
- (3) If you cannot verify that a product is genuine, don't sell it, as you may be violating the law.

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Case Story 2 - An Indonesian man in Taiwan selling counterfeit goods on Shopee was searched and arrested by the police.

The man named Ahan had come to Taiwan from Indonesia to study at a public university ten years ago. During his studies, he met a girl, a fellow student from Indonesia. After graduation, the couple decided to settle down in Taiwan.

At some point, Ahan and Ani ran an online auction where they sold imported sports socks that were counterfeit ADIDAS and NIKE. The police found out about it and during a home search, they seized more than 8,000 pairs of counterfeit socks with an infringing market value of about NT\$ 2 million.

Gentle reminder: In Taiwan, selling counterfeit goods is a crime which comes with criminal liability. In this case, just the loss from import substitution of genuine goods exceeded NT\$ 500,000. In addition to facing fixed-term imprisonment of up to a year and a fine of up to NT\$ 50,000, a large sum of compensation must be paid.

Related law: Article 97 of the Trademark Act Article 97: "Any person who knowingly sells or, due to an intent to sell, possesses, displays, exports, or imports another person's goods referred to in the preceding two articles shall be liable to imprisonment for a period not exceeding one year and/or a fine not exceeding NT\$50,000; same penalties shall also apply to acts performed through electronic media or the Internet."

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