

NO. 13 OF 2008

THE ANTI-COUNTERFEIT ACT

SUBSIDIARY LEGISLATION

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THE ANTI-COUNTERFEIT REGULATIONS, 2010

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SCHEDULES

THE ANTI-COUNTERFEIT REGULATIONS, 2010

[Legal Notice 126 of 2010, Legal Notice 117 of 2021]

1. Citation

These Regulations may be cited as the Anti-Counterfeit Regulations, 2010.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Anti-Counterfeit Act (Cap. 130A);

"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 in respect of any seized goods or to the Commissioner in respect of suspect counterfeit goods under the Act;

"approved laboratory" means a testing or analysis facility approved by the Board and published by the Cabinet Secretary in the *Gazette*;

"batch" means the total number of identical items seized by an inspector under the Act;

"Board" means the Board of the Authority established under section 6 of the Act;

"certificate of authority" means a certificate issued by the Board to an inspector under section 22 of the Act;

"copies" means certified copies of statements or any documentary evidence issued under the Act or these Regulations;

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

"inventory" means a record of goods seized by an inspector under the Act; and

"registration certificate" means a certificate relating to protection of intellectual property rights issued under any written law.

[L.N. 117/2021, r. 2.]

3. Powers of the Board

The Board shall be responsible to the Cabinet Secretary for all its powers, duties and functions under the Act.

[L.N. 117/2021, r. 3.]

4. Term of office of the Executive Director

The Executive Director shall hold office for a period of three years, and shall be eligible for re-appointment for one further term.

5. Appointment of inspectors

(1) The Board shall issue a Certificate of Authority in Form ACA 1 set out in the First Schedule, to an inspector appointed under section 22 of the Act.

(2) An inspector shall, during the performance of his duties, produce the Certificate of Authority for the purpose of identification.

6. Designated inspectors

(1) A designated inspector under section 22(3) of the Act shall operate under the instruction and direction of his respective institution.

[Subsidiary]

(2) The institutions under which the designated inspectors operate, shall report to the Authority, concerning all matters relating to counterfeit goods, on a monthly basis.

[L.N. 117/2021, r. 4.]

7. Powers of inspectors

(1) An inspector may in the performance of his duties require a person, dealing in goods which are suspected to be counterfeit goods, to provide sufficient labour for the proper and expeditious handling of goods or any tools under the Act.

(2) Where a person, dealing in goods which are suspected to be counterfeit goods suspect goods fails to provide sufficient labour for the proper and expeditious handling of the goods or any tools, the inspector may hire such labour as is reasonably necessary at the expense of that person.

8. Inventory of seized goods

(1) An inspector shall record any goods or tools seized in accordance with the Act, in Form ACA 2 set out in the First Schedule.

(2) Where a person from whom goods have been seized declines to sign the Form referred to in paragraph (1) as required, the inspector shall make a note to that effect on the form.

[L.N. 117/2021, r. 5.]

9. Application for copies of statements

(1) A complainant wishing to obtain copies of a statement or documentary evidence procured by an inspector under section 26(1) of the Act, shall apply to the Executive Director in Form ACA 3 set out in the First Schedule.

(2) An application under paragraph (1) shall be accompanied by—

- (a) documentary proof that the applicant is the complainant;
- (b) an affidavit stating that the copies obtained shall be used for only the purpose indicated on the application form; and
- (c) the fee specified in the Second Schedule.

10. Application for inspection of seized goods

(1) A person wishing to inspect, goods seized under section 27(2) of the Act, shall apply to the Executive Director in Form ACA 4 set out in the First Schedule.

(2) The application under paragraph (1) shall be accompanied by fee specified in the Second Schedule.

11. Application for samples

(1) A person who wishes to obtain samples of goods seized for testing or analysis under section 27(3) of the Act, shall apply in Form ACA 5 set out in the First Schedule.

(2) The application under paragraph (1) shall be accompanied by fee specified in the Second Schedule.

12. Taking of samples by an inspector

(1) For the purpose of obtaining a sample from goods seized under section 27(4) of the Act, an inspector shall select the sample from the batch of the goods seized.

(2) An inspector shall select a sample of the goods seized and make a record of the sample taken in Form ACA 6 set out in the First Schedule.

(3) The sample obtained under this regulation may be submitted to an approved laboratory for testing or analysis in Form ACA 7 set out in the First Schedule.

13. Laying a complaint

(1) An intellectual property right owner or his agent who wishes to lay a complaint to the Executive Director under section 33(2) of the Act shall lay a complaint in Form ACA 8 set out in the First Schedule.

(2) The complaint under paragraph (1) of this regulation shall be accompanied by—

- (a) the fee specified in the Second Schedule;
- (b) an affidavit sworn by the complainant or his agent attaching the registration certificate and or any other relevant document in support of the complaint; and
- (c) an indemnity in Form ACA 9 set out in the First Schedule, signed by the complainant indemnifying the Authority from any claim for wrongful seizure, removal or detention of alleged counterfeit goods.

[L.N. 117/2021, r. 6.]

14. Application to the Commissioner to seize suspect goods

(1) An intellectual property right owner (or his agent) who wishes, to have suspected counterfeit goods seized by the Commissioner, under section 34(1) shall apply in Form ACA 10 set out in the First Schedule.

(2) The application under paragraph (1) shall be accompanied by—

- (a) the fee specified in the Second Schedule;
- (b) an affidavit sworn by the complainant attaching the registration certificate or any other relevant document in support of the application; and
- (c) an indemnity in the Form ACA 11 set out in the First Schedule signed by the complainant indemnifying the Customs Authority from any claim made for any wrongful seizure, removal or detention of alleged counterfeit goods.

15. Submission of particulars

(1) An intellectual property right owner or his agent may submit particulars of the intellectual property right to the Authority in Form ACA 12 set out in the First Schedule.

(2) The Executive Director shall maintain a database of all the particulars submitted under this regulation.

(3) A person wishing to make a search on the database maintained under this regulation shall apply in Form ACA 13 set out in the First Schedule and pay the fee specified in the Second Schedule.

[L.N. 117/2021, r. 7.]

16. Disposal of seized goods

(1) Where the goods seized under the Act are required to be returned to the owner, an inspector shall release the goods after completing Form ACA 14 of the First Schedule and any goods used for testing or analysis shall be recorded.

(2) Where the goods seized under the Act are perishable, the inspector shall apply to a magistrate for an order of disposal.

(3) Any goods forfeited under section 28(2) of the Act shall be destroyed or disposed of in such manner as the Executive Director may determine.

(4) The Executive Director shall ensure that the disposal under this regulation shall not adversely affect the owner of the intellectual property right or a licensee.

(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.

[L.N. 117/2021, r. 8.]

17. False declarations

A person who—

[Subsidiary]

- (a) with intent to deceive or mislead, gives any false information in relation to any application made to the Authority or Commissioner; or
- (b) removes, adds to, alters, defaces, or renders illegible any information on any Form prescribed under these Regulations in relation to any goods or tools,

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

[L.N. 117/2021, r. 9.]

18. Appointment of an Agent

(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).

[L.N. 117/2021, r. 10]

18A. Code of Conduct

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

[L.N. 117/2021, r. 10.]

18B. De-registration of an agent

(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.

[L.N. 117/2021, r. 10.]

18C. Exemption from certain requirements or conditions

(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.

[L.N. 117/2021, r. 10.]

19. Forms

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

(2) Notwithstanding the provision of these Regulations, a document which deviates from the prescribed 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 17 shall apply.

20. Offence

The owner of suspected counterfeit goods who continues to deal or trade in goods of similar description, commits an offence and is liable upon conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding six thousand shillings, or both.

20A. Application for compounding of offences

(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.

[L.N. 117/2021, r. 11.]

21. Discretion

(1) The Executive Director may exercise his discretion on any application made under these Regulations.

(2) Any person who is aggrieved by any decision of the Executive Director may appeal to the Cabinet Secretary.

[L.N. 117/2021, r. 12.]

22. Approved laboratories

The Cabinet Secretary shall publish a list of approved laboratories for the purpose of testing or analyzing goods seized under the Act.

[L.N. 117/2021, r. 13.]

[Subsidiary]

23. Register

(1) The Executive Director shall maintain registers of all complaints received and prosecutions instituted under the Act.

(2) A person wishing to search the register maintained under paragraph (1) shall apply in Form ACA 13 set out in the First Schedule and pay the fee specified in the Second Schedule.

FIRST SCHEDULE

[L.N. 117/2021, r. 14.]

FORM ACA 1 (r. 5(1))

ANTI-COUNTERFEIT ACT
The Anti-Counterfeit Agency

CERTIFICATE OF AUTHORITY

Certificate No.

Passport Size Photograph

1.	Name of Inspector	
2.	I.D. Number	
3.	Designation	
4.	Signature of holder	

I certify that the person whose particulars are herein indicated has been appointed an inspector under section 22 of the Anti-Counterfeit Act, 2008.

Issued and sealed on this day of, 20.....

.....
Signature

EXECUTIVE DIRECTOR

This Certificate is the property of The Anti-Counterfeit Agency. In case it is lost and found, the same should be returned to The Anti-Counterfeit Agency, Telposta Towers, 23rd Floor P.O. Box 30418-00100 Nairobi, or surrendered to the nearest Police Station.

FORM ACA 2 (r. 8(1))

ANTI-COUNTERFEIT ACT
The Anti-Counterfeit Agency

INVENTORY OF SEIZED GOODS

1.	Name of the owner/agent of the seized goods	
2.	Telephone number, postal and physical address	
3.	Description of goods	
4.	Quantity of goods	
5.	Place of seizure (physical address)	
6.	Date and time of seizure	
7.	Full particulars of the inspector seizing the goods	
8.	Remarks	

Anti-Counterfeit

[Subsidiary]

FIRST SCHEDULE, FORM ACA 2—continued

Dated this day of, 20

Signature

INSPECTOR

Signature

OWNER/AGENT

Name

Signature

WITNESS

Received by:

Name

Signature Date

DEPOT MANAGER

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This form should be completed in quadruplicate. One copy to be issued to the owner/agent of the suspected goods, one copy to be delivered to the counterfeit goods depot, one copy to be filed in the investigation file by the inspector and one copy to be filed in the relevant file.

FORM ACA 3

(r. 9(1))

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

APPLICATION FOR COPIES OF STATEMENTS

The Executive Director,
The Anti-Counterfeit Agency

1.	Name of the owner or agent	
2.	Telephone number, postal and physical address	
3.	Reference number of the complaint under section 33	
4.	Reason(s) for seeking copies	
5.	Remarks	

Dated this day of, 20

Signature

OWNER/AGENT

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

.....

EXECUTIVE DIRECTOR

[Subsidiary]

FORM ACA 4 (r. 10(1))

ANTI-COUNTERFEIT ACT
The Anti-Counterfeit Agency

APPLICATION FOR INSPECTION OF SEIZED GOODS

The Executive Director,
The Anti-Counterfeit Agency

1.	Name of the complainant/prospective complainant/suspect/ any other interested person	
2.	Telephone number, postal and physical address	
3.	Reference number of the matter	
4.	Description of goods	
5.	Quantity of goods	
6.	Place of seizure (physical address)	
7.	Reason for inspection	
8.	Remarks	

Dated this day of, 20.....

Signature
APPLICANT

For official use only
THIS APPLICATION IS APPROVED/NOT APPROVED.

.....
EXECUTIVE DIRECTOR
Inspection carried out by the applicant on this day of, 20.....

.....
DEPOT MANAGER

NOTES:
1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form shall be completed in quadruplicate. One copy to be retained by the Director, one copy to be given to the applicant, two copies to be given to the Depot Manager, who will return one of the copies to the Director after inspection of the goods.

FORM ACA 5 (r. 11(1))

ANTI-COUNTERFEIT ACT
The Anti-Counterfeit Agency

APPLICATION FOR SAMPLES

1.	Name of applicant	
2.	Telephone number, postal and physical address	
3.	Reference number of the matter	
4.	Description of goods	
5.	Reason for sampling	
6.	Sample size	
7.	Indicate type of testing/analysis	Destructive <input type="checkbox"/> Non Destructive <input type="checkbox"/>
8.	Remarks	

Dated this day of, 20.....

Signature
APPLICANT

For official use only
THIS APPLICATION IS APPROVED/NOT APPROVED

.....
EXECUTIVE DIRECTOR
Sample taken by the applicant on this day of, 20.....

.....
DEPOT MANAGER

NOTES:
1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form shall be completed in quadruplicate. One copy to be retained by the Executive Director, one copy to be given to the applicant, two copies to be given to the Depot Manager, who will return one of the copies to the Executive Director after inspection of the goods.

Anti-Counterfeit

[Subsidiary]

FORM ACA 6

(r. 12(2))

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

SAMPLES FOR TESTING/ANALYSIS

1.	Full particulars of the inspector	
2.	Reference Number of the matter	
3.	Quantity of the goods	

4.	Description of the goods		
5.	Sample size		
6.	Indicate type of testing/analysis	Destructive	Non Destructive
7.	Remarks		
Dated this day of, 20.....			

Signature

INSPECTOR

Released by:

Name

Signature Date:

DEPOT MANAGER

NOTES:

- 1 If space provided is not sufficient, please use a separate sheet of paper.
- 2 This Form shall be completed in triplicate. One copy to be retained by the inspector, one copy to be filed in the relevant file and one copy to be retained by the Depot Manager.

FORM ACA 7

(r. 12(3))

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

SUBMISSION OF SAMPLES FOR TESTING/ANALYSIS

To

1.	Full particulars of the inspector	
2.	Reference Number of the matter	
3.	Quantity of the goods	
4.	Description of the goods	
5.	Remarks	

Dated this day of, 20.....

Signature

INSPECTOR

Received by:

Name

Signature Date:

(Official stamp)

[Subsidiary]

Note.—This Form shall be completed in triplicate. One copy to be retained by the inspector, one copy to be filed in the relevant file and one copy to be submitted with the sample to the testing or analysis laboratory.

Ref. No.

FORM ACA 8 (r. 13(1))

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

LAYING A COMPLAINT

The Executive Director,
The Anti-Counterfeit Agency

1.	Name of the owner of intellectual property	
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.	Description of suspected counterfeit goods	
6.	Place where the goods are situated or intended destination	
7.	Particulars of the consignment or packages	
8.	The means of transport where applicable	
9.	The identity of the importer, exporter, holder, distributor or manufacturer.	
10.	Place where goods are produced, if known	
11.	Means of production where applicable	
12.	Nature of complaint	
13.	Description of the genuine goods or copyrighted works	
14.	Samples of the genuine products or copyrighted works	

Dated this day of, 20

Signature
COMPLAINANT/AGENT

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form shall be completed in triplicate.
3. This application shall be accompanied by a registration certificate and or any other documentary proof that the applicant is the complainant and an affidavit sworn by the complainant/agent in compliance with regulation 13(2)(b).

FORM ACA 9 (r. 13(2)(c))

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

INDEMNITY

I, (Full name)
of P.O. Box do hereby,
undertake to indemnify the Anti-Counterfeit Agency, its staff members and agents against any liability that may be incurred pursuant to seizure, removal or detention of any alleged counterfeit goods or any other action with or delivery of the goods, as described below, in terms of the Anti-Counterfeit Act, 2008 and any other written law and further undertake to cover any expenses that may be incurred in effecting the seizure, removal or detention of the goods and to pay any legal costs incurred by the Agency pursuant to the seizure, removal or detention of the goods and to pay and arrange for the removal of such goods to a place of storage, and to pay any costs, including any Agency's counterfeit depot rent as determined by the Executive Director and to arrange for and pay for the destruction of the goods if required.

Dated this day of, 20,
at (place)

.....
(Signature) *Complainant*

.....
(Designation)

Guarantors:

1. 2.
Guarantor *Guarantor*

Witnesses:

1. 2.
Witnesses *Witnesses*
(No wording is to be changed or altered in this indemnity)

Anti-Counterfeit

[Subsidiary]

Ref. No.

FORM ACA 10

(r. 14(1))

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

APPLICATION TO SEIZE AND DETAIN SUSPECT COUNTERFEIT GOODS

The Commissioner is hereby requested to seize and detain suspect counterfeit goods, the particulars of which are set out here below—

1.	Name of the owner of the intellectual property	
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.	Description of suspected counterfeit goods	
6.	Place where the goods are situated or intended destination	
7.	Particulars of the consignment or packages	
8.	The means of transport where applicable	
9.	The identity of the importer, exporter, holder, distributor or manufacturer	
10.	Place where goods are produced, if known	
11.	Means of production where applicable	
12.	Description of the genuine goods or copyrighted works	
13.	Samples of the genuine products or copyrighted works	

Dated this day of, 20

Signature

COMPLAINANT/AGENT

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form shall be completed in triplicate.
3. This application shall be accompanied by registration certificate and or any other documentary proof that the applicant is the complainant and an affidavit sworn by the complainant/agent in compliance with regulation 14(2)(b).

[Subsidiary]

FORM ACA 11

(r. 14(2)(c))

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

INDEMNITY

I, (Full name) of P.O. Box do hereby, undertake to indemnify the Customs Authority, its staff members and agents against any liability that may be incurred pursuant to seizure, removal or detention of any alleged counterfeit goods or any other action with or delivery of the goods, as described below, in terms of the Anti-Counterfeit Act, 2008 and any other written law and further undertake to cover any expenses that may be incurred in effecting the seizure, removal or detention of the goods and to pay any legal costs incurred by the Customs Authority pursuant to the seizure, removal or detention of the goods and to pay and arrange for the removal of such goods to a place of storage, and to pay any storage costs, including any Customs Authority's warehouses rent as determined by the Commissioner and to arrange for and pay for the destruction of the goods if required.

Dated this day of, 20....., at (place)

.....
(Signature) Complainant

FIRST SCHEDULE, FORM ACA 11—continued

.....
(Designation)

Guarantors:

1. 2.
Guarantor Guarantor

Witnesses:

1. 2.
Witnesses Witnesses
(No wording is to be changed or altered in this indemnity)

Ref. No.

FORM ACA 12

(r. 15(1))

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

SUBMISSION OF PARTICULARS OF INTELLECTUAL PROPERTY RIGHT

The Executive Director,
The Anti-Counterfeit Agency

1.	Name of owner of the intellectual property	
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.	Description of the intellectual property right	
6.	Description of goods	
7.	Samples of the goods or copyrighted works	
8.	Place where the goods are produced	
9.	Remarks	

Dated this day of, 20

Signature

NOTES:

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

FORM ACA 13

(r. 15(3) and r. 23(2))

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

APPLICATION FOR SEARCH

The Executive Director,
The Anti-Counterfeit Agency

1.	Name of Applicant	
2.	Telephone number, postal and physical address of applicant	
3.	Name of owner	
4.	Telephone number, postal and physical address of owner	
5.	Name of agent, if any	
6.	Telephone number, postal and physical address of agent	
7.	Reason for the search	
8.	Remarks	

Dated this Day of, 20

Signature

APPLICANT

[Subsidiary]

form ACA 14

(r. 16(1))

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

RELEASE OF SEIZED GOODS

The goods described here below are hereby released to the person specified:

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.	Reference number of the matter	
6.	Description of the goods	
7.	Quantity of goods seized	
8.	Quantity of goods used for testing or analysis	
9.	Quantity of goods released	

FIRST SCHEDULE, FORM ACA 14—continued

10.	Reason(s) for release	
11.	Remarks	

Dated this day of, 20.....

Signature

INSPECTOR

Received By:

Name Signature

Identity Number/Passport/Driving Licence

(Delete whichever is not applicable)

Date

Witness

Name and Signature

Date

Name

Signature Date

DEPOT MANAGER

NOTES:

- 1 If space provided is not sufficient, please use a separate sheet of paper.
- 2 This form should be completed in quadruplicate. One copy to be issued to the owner/agent of the suspected goods, one copy to be delivered to the Counterfeit Goods Depot, one copy to be filed in the investigation file by the Inspector and one copy to be filed in the Agency's registry.

Anti-Counterfeit

[Subsidiary]

FORM ACA 15

(r. 18)

ANTI-COUNTERFEIT ACT

The Anti-Counterfeit Agency

POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY, (full name of owner)

 of (address)
 (hereinafter called "the owner") hereby nominates, constitutes and appoints (name of Attorney)

 of (address) (hereinafter called "the Agent"), to be the true and lawful agent of the owner with full power and authority for, and in the name of, and on behalf of the owner, to do or execute all or any of the acts and things hereinafter mentioned, that is to

Generally to do all such acts and things not herein specially authorised as the Agent may deem proper or expedient in relation to all or any of the purposes or matters aforesaid.

The owner hereby agrees to ratify all that the Agent shall do or cause to be done in execution of this deed. This power of attorney shall in all respects be interpreted in accordance with and governed by the laws of the Republic of Kenya.

FIRST SCHEDULE, FORM ACA 15—continued

Signed and sealed on this day of, 20.....,
 at (place)
 Full name Designation

Signature

Note.—This form shall be stamped in accordance with the provisions of the Stamp Duty Act.

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 Signature Date
 OWNER/AGENT

[Subsidiary]

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 thisday 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)	

[Subsidiary]

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

SECOND SCHEDULE

[Regs. 9(2)(c), 10(2), 11(2), 13(2)(a), 14(2)(a), 15(3), 18, and 23(2).]

[Subsidiary]

ANTI-COUNTERFEIT ACT
The Anti-Counterfeit Agency
FEES

	Forms	Purpose	KSh.
1.	FORM ACA 3	Application for copies of statements per page	50
		Additional fees for certification per document	1,000
2.	FORM ACA 4	Application for inspection of seized goods	2,000
3.	FORM ACA 5	Application for samples	5,000
4.	FORM ACA 8	Laying of a complaint	10,000
5.	FORM ACA 10	Application to the Commissioner to seize suspected counterfeit goods	10,000
6.	FORM ACA 13	Application for search	1,000
7.	FORM ACA 15	Power of Attorney	1,000

THE ANTI-COUNTERFEIT (RECORDATION) REGULATIONS, 2021

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Application for recordation
4. Submission of particulars of imported goods
5. Change of ownership
6. Change of name
7. Renewal of recordation
8. Cancellation or revocation of recordation
9. Register
10. Search
11. Copies of documents
12. Appointment of agents
13. False declaration
14. Forms

SCHEDULES

FIRST SCHEDULE —

FORMS

SECOND SCHEDULE —

FEES

THE ANTI-COUNTERFEIT (RECORDATION) REGULATIONS, 2021

[Legal Notice 118 of 2021]

1. Citation

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

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Anti-Counterfeit Act, Act 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. Application for recordation

(1) Pursuant to section 34B 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.

(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. Submission of particulars of imported goods

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.

5. Change of ownership

(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.

(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.

[Subsidiary]

6. Change of name

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.

7. Renewal of recordation

Pursuant to section 34B(11) of the Act, an application for renewal of a recordation shall be made to the Authority—

- (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. Cancellation or revocation of recordation

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.

9. Register

The Authority shall maintain a register of all recorded intellectual property rights.

10. Search

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.

11. Copies of documents

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.

12. Appointment of agents

(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.

(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, No. 126 of 2010.

13. False declaration

A person who—

- (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. Forms

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

(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)

[Subsidiary]

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.

[Subsidiary]

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, 4, 5, 6, 7, 10 and 11)

No.	Forms	Purpose	Amount (United States Dollars)
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