

109TH CONGRESS
1ST SESSION

H. R. 32

IN THE SENATE OF THE UNITED STATES

MAY 24, 2005

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; FINDINGS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Stop Counterfeiting in Manufactured Goods Act”.

4 (b) **FINDINGS.**—The Congress finds that—

5 (1) the United States economy is losing millions
6 of dollars in tax revenue and tens of thousands of
7 jobs because of the manufacture, distribution, and
8 sale of counterfeit goods;

9 (2) the Bureau of Customs and Border Protec-
10 tion estimates that counterfeiting costs the United
11 States \$200 billion annually;

12 (3) counterfeit automobile parts, including
13 brake pads, cost the auto industry alone billions of
14 dollars in lost sales each year;

15 (4) counterfeit products have invaded numerous
16 industries, including those producing auto parts,
17 electrical appliances, medicines, tools, toys, office
18 equipment, clothing, and many other products;

19 (5) ties have been established between counter-
20 feiting and terrorist organizations that use the sale
21 of counterfeit goods to raise and launder money;

22 (6) ongoing counterfeiting of manufactured
23 goods poses a widespread threat to public health and
24 safety; and

1 (7) strong domestic criminal remedies against
2 counterfeiting will permit the United States to seek
3 stronger anticounterfeiting provisions in bilateral
4 and international agreements with trading partners.

5 **SEC. 2. TRAFFICKING IN COUNTERFEIT MARKS.**

6 Section 2320 of title 18, United States Code, is
7 amended as follows:

8 (1) Subsection (a) is amended by inserting after
9 “such goods or services” the following: “, or inten-
10 tionally traffics or attempts to traffic in labels,
11 patches, stickers, wrappers, badges, emblems, medal-
12 lions, charms, boxes, containers, cans, cases,
13 hangtags, documentation, or packaging of any type
14 or nature, knowing that a counterfeit mark has been
15 applied thereto, the use of which is likely to cause
16 confusion, to cause mistake, or to deceive,”.

17 (2) Subsection (b) is amended to read as fol-
18 lows:

19 “(b)(1) The following property shall be subject to for-
20 feiture to the United States and no property right shall
21 exist in such property:

22 “(A) Any article bearing or consisting of a
23 counterfeit mark used in committing a violation of
24 subsection (a).

1 “(B) Any property used, in any manner or part,
2 to commit or to facilitate the commission of a viola-
3 tion of subsection (a).

4 “(2) The provisions of chapter 46 of this title relating
5 to civil forfeitures shall extend to any seizure or civil for-
6 feiture under this section. At the conclusion of the for-
7 feiture proceedings, the court, unless otherwise requested
8 by an agency of the United States, shall order that any
9 forfeited article bearing or consisting of a counterfeit
10 mark be destroyed or otherwise disposed of according to
11 law.

12 “(3)(A) The court, in imposing sentence on a person
13 convicted of an offense under this section, shall order, in
14 addition to any other sentence imposed, that the person
15 forfeit to the United States—

16 “(i) any property constituting or derived from
17 any proceeds the person obtained, directly or indi-
18 rectly, as the result of the offense;

19 “(ii) any of the person’s property used, or in-
20 tended to be used, in any manner or part, to com-
21 mit, facilitate, aid, or abet the commission of the of-
22 fense; and

23 “(iii) any article that bears or consists of a
24 counterfeit mark used in committing the offense.

1 “(B) The forfeiture of property under subparagraph
2 (A), including any seizure and disposition of the property
3 and any related judicial or administrative proceeding, shall
4 be governed by the procedures set forth in section 413
5 of the Comprehensive Drug Abuse Prevention and Control
6 Act of 1970 (21 U.S.C. 853), other than subsection (d)
7 of that section. Notwithstanding section 413(h) of that
8 Act, at the conclusion of the forfeiture proceedings, the
9 court shall order that any forfeited article or component
10 of an article bearing or consisting of a counterfeit mark
11 be destroyed.

12 “(4) When a person is convicted of an offense under
13 this section, the court, pursuant to sections 3556, 3663A,
14 and 3664, shall order the person to pay restitution to the
15 owner of the mark and any other victim of the offense
16 as an offense against property referred to in section
17 3663A(c)(1)(A)(ii).

18 “(5) The term ‘victim’, as used in paragraph (4), has
19 the meaning given that term in section 3663A(a)(2).”.

20 (3) Subsection (e)(1) is amended—

21 (A) by striking subparagraph (A) and in-
22 serting the following:

23 “(A) a spurious mark—

24 “(i) that is used in connection with
25 trafficking in any goods, services, labels,

1 patches, stickers, wrappers, badges, em-
2 blems, medallions, charms, boxes, con-
3 tainers, cans, cases, hangtags, documenta-
4 tion, or packaging of any type or nature;

5 “(ii) that is identical with, or substan-
6 tially indistinguishable from, a mark reg-
7 istered on the principal register in the
8 United States Patent and Trademark Of-
9 fice and in use, whether or not the defend-
10 ant knew such mark was so registered;

11 “(iii) that is applied to or used in con-
12 nection with the goods or services for
13 which the mark is registered with the
14 United States Patent and Trademark Of-
15 fice, or is applied to or consists of a label,
16 patch, sticker, wrapper, badge, emblem,
17 medallion, charm, box, container, can,
18 case, hangtag, documentation, or pack-
19 aging of any type or nature that is de-
20 signed, marketed, or otherwise intended to
21 be used on or in connection with the goods
22 or services for which the mark is registered
23 in the United States Patent and Trade-
24 mark Office; and

1 “(iv) the use of which is likely to
2 cause confusion, to cause mistake, or to
3 deceive; or”;

4 (B) by amending the matter following sub-
5 paragraph (B) to read as follows:

6 “but such term does not include any mark or
7 designation used in connection with goods or
8 services, or a mark or designation applied to la-
9 bels, patches, stickers, wrappers, badges, em-
10 blems, medallions, charms, boxes, containers,
11 cans, cases, hangtags, documentation, or pack-
12 aging of any type or nature used in connection
13 with such goods or services, of which the manu-
14 facturer or producer was, at the time of the
15 manufacture or production in question, author-
16 ized to use the mark or designation for the type
17 of goods or services so manufactured or pro-
18 duced, by the holder of the right to use such
19 mark or designation.”.

20 (4) Section 2320 is further amended—

21 (A) by redesignating subsection (f) as sub-
22 section (g); and

23 (B) by inserting after subsection (e) the
24 following:

1 “(f) Nothing in this section shall entitle the United
2 States to bring a criminal cause of action under this sec-
3 tion for the repackaging of genuine goods or services not
4 intended to deceive or confuse.”.

5 **SEC. 3. SENTENCING GUIDELINES.**

6 (a) REVIEW AND AMENDMENT.—Not later than 180
7 days after the date of enactment of this Act, the United
8 States Sentencing Commission, pursuant to its authority
9 under section 994 of title 28, United States Code, and
10 in accordance with this section, shall review and, if appro-
11 priate, amend the Federal sentencing guidelines and policy
12 statements applicable to persons convicted of any offense
13 under—

14 (1) section 1204 of title 17, United States
15 Code; or

16 (2) section 2318 or 2320 of title 18, United
17 States Code.

18 (b) AUTHORIZATION.—The United States Sentencing
19 Commission may amend the Federal sentencing guidelines
20 in accordance with the procedures set forth in section
21 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note)
22 as though the authority under that section had not ex-
23 pired.

24 (c) RESPONSIBILITIES OF UNITED STATES SEN-
25 TENCING COMMISSION.—In carrying out this section, the

1 United States Sentencing Commission shall determine
2 whether the definition of “infringement amount” set forth
3 in application note 2 of section 2B5.3 of the Federal sen-
4 tencing guidelines is adequate to address situations in
5 which the defendant has been convicted of one of the of-
6 fenses listed in subsection (a) and the item in which the
7 defendant trafficked was not an infringing item but rather
8 was intended to facilitate infringement, such as an anti-
9 circumvention device, or the item in which the defendant
10 trafficked was infringing and also was intended to facili-
11 tate infringement in another good or service, such as a
12 counterfeit label, documentation, or packaging, taking into
13 account cases such as U.S. v. Sung, 87 F.3d 194 (7th
14 Cir. 1996).

Passed the House of Representatives May 23, 2005.

Attest:

JEFF TRANDAHL,

Clerk.