

110TH CONGRESS
2D SESSION

H. R. 7224

To amend title 18, United States Code, to create an offense for misuse
in communications of a registered mark.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2008

Mr. CANNON introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To amend title 18, United States Code, to create an offense
for misuse in communications of a registered mark.

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

3 **SECTION 1. CRIMINAL MISUSE OF REGISTERED MARK.**

4 (a) IN GENERAL.—Chapter 113 of title 18, United
5 States Code, is amended by inserting after section 2320
6 the following new section:

7 **“§ 2320A. Criminal misuse of registered mark**

8 “(a) OFFENSE.—

9 “(1) IN GENERAL.—Whoever, in communica-
10 tions that may be regulated by Congress, uses a

1 trademark, service mark, collective mark, or certifi-
2 cation mark registered on the principal register in
3 the United States Patent and Trademark Office,
4 with the intent to deceive the public to believe that
5 such use is authorized by the owner of the mark
6 shall—

7 “(A) if an individual, be fined not more
8 than \$2,000,000 or imprisoned not more than
9 10 years, or both; and

10 “(B) if a person other than an individual,
11 be fined not more than \$5,000,000.

12 “(2) SUBSEQUENT OFFENSES.—In the case of
13 an offense by a person under paragraph (1) that oc-
14 curs after that person is convicted of another offense
15 under paragraph (1), the person convicted shall—

16 “(A) if an individual, be fined not more
17 than \$5,000,000 or imprisoned not more than
18 20 years, or both; and

19 “(B) if other than an individual, be fined
20 not more than \$15,000,000.

21 “(b) DEFENSES AND LIMITATIONS ON REMEDIES.—
22 All defenses, affirmative defenses, and limitations on rem-
23 edies that would apply in an action under the Lanham
24 Act shall apply in a prosecution under this section. In a
25 prosecution under this section, the defendant shall have

1 the burden of proof, by a preponderance of the evidence,
2 of any such affirmative defense.

3 “(c) PRE-SENTENCE REPORT.—During preparation
4 of the pre-sentence report pursuant to Rule 32(c) of the
5 Federal Rules of Criminal Procedure, victims of the of-
6 fense under subsection (a) shall be permitted to submit,
7 and the probation officer shall receive, a victim impact
8 statement that identifies the victim of the offense and the
9 extent and scope of the injury and loss suffered by the
10 victim, including the estimated economic impact of the of-
11 fense on that victim.

12 “(d) DEFINITION.—For purposes of this section, the
13 term ‘Lanham Act’ means the Act entitled ‘An Act to pro-
14 vide for the registration and protection of trademarks used
15 in commerce, to carry out the provisions of certain inter-
16 national conventions, and for other purposes’, approved
17 July 5, 1946.”.

18 (b) CONFORMING AMENDMENT.—The table of sec-
19 tions and the beginning of chapter 113 of title 18, United
20 States Code, is amended by inserting adter the item relat-
21 ing to section 2320 the following new item

“2320A. Criminal misuse of registered mark.”.

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