

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2517

Session of
1996

INTRODUCED BY SEMMEL, TRELLO, STAIRS, BELARDI, GEIST, WOGAN,
DIGIROLAMO, BAKER, HASAY, GRUPPO, EGOLF, HESS, CLYMER, MELIO,
FARMER, MILLER, STISH, MERRY, HERSHEY, ROONEY, BROWNE,
YOUNGBLOOD AND RUBLEY, MARCH 26, 1996

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 14, 1996

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, defining the offense of trademark
3 counterfeiting; and providing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 18 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 ~~§ 4118~~ 4119. Trademark counterfeiting. <—

9 (a) Offense defined.--Any person who ~~willfully~~ KNOWINGLY <—
10 manufactures, uses, displays, advertises, distributes, offers
11 for sale, sells or possesses with intent to sell or distribute
12 any items or services bearing or identified by a counterfeit
13 mark shall be guilty of the crime of trademark counterfeiting.

14 (b) Presumption.--A person having possession, custody or
15 control of more than 25 items bearing a counterfeit mark shall
16 be presumed to possess said items with intent to sell or
17 distribute.

1 (c) Penalties.--

2 (1) Except as provided in paragraphs (2) and (3), a
3 violation of this section constitutes a misdemeanor of the
4 first degree.

5 (2) A violation of this section constitutes a felony of
6 the third degree if:

7 (i) the defendant has previously been convicted
8 under this section; or

9 (ii) the violation involves more than 100 but less
10 than 1,000 items bearing a counterfeit mark or the total
11 retail value of all items or services bearing or
12 identified by a counterfeit mark is more than \$2,000, but
13 less than \$10,000.

14 (3) A violation of this section constitutes a felony of
15 the second degree if:

16 (i) the defendant has been previously convicted of
17 two or more offenses under this section;

18 (ii) the violation involves the manufacture or
19 production of items bearing counterfeit marks; or

20 (iii) the violation involves 1,000 or more items
21 bearing a counterfeit mark or the total retail value of
22 all items or services bearing or identified by a
23 counterfeit mark is more than \$10,000.

24 (d) Quantity or retail value.--The quantity or retail value
25 of items or services shall include the aggregate quantity or
26 retail value of all items or services bearing or identified by
27 every counterfeit mark the defendant manufactures, uses,
28 displays, advertises, distributes, offers for sale, sells or
29 possesses.

30 ~~(e) Fine. Any person convicted under this section shall be~~

<—

~~1 fined an amount up to three times the retail value of the items~~
~~2 or services bearing or identified by a counterfeit mark, unless~~
~~3 extenuating circumstances are shown by the defendant.~~

4 (E) FINE.--ANY PERSON CONVICTED UNDER THIS SECTION SHALL BE <—
5 FINED IN ACCORDANCE WITH EXISTING LAW OR AN AMOUNT UP TO THREE
6 TIMES THE RETAIL VALUE OF THE ITEMS OR SERVICES BEARING OR
7 IDENTIFIED BY A COUNTERFEIT MARK, WHICHEVER IS GREATER, UNLESS
8 EXTENUATING CIRCUMSTANCES ARE SHOWN BY THE DEFENDANT.

9 (f) Seizure, forfeiture and disposition.--

10 (1) Any items bearing a counterfeit mark, and all
11 personal property, including, but not limited to, any items,
12 objects, tools, machines, equipment, instrumentalities or
13 vehicles of any kind, employed or used in connection with a
14 violation of this act may be seized by any law enforcement
15 officer.

16 (2) All seized personal property referenced in paragraph
17 (1) shall be forfeited in accordance with applicable law. <—

18 ~~(3) Upon petition of the intellectual property owner,~~
19 ~~all seized items bearing a counterfeit mark shall be released~~
20 ~~to the intellectual property owner for destruction or~~
21 ~~disposition.~~

22 ~~(4) If the intellectual property owner does not request~~
23 ~~petition of seized items bearing a counterfeit mark, such~~
24 ~~items shall be destroyed unless the intellectual property~~
25 ~~owner consents to another disposition., UNLESS THE~~ <—
26 PROSECUTING ATTORNEY RESPONSIBLE FOR THE CHARGES AND THE
27 INTELLECTUAL PROPERTY OWNER CONSENT IN WRITING TO ANOTHER
28 DISPOSITION.

29 (g) Evidence.--Any Federal or State certificate of
30 registration of any intellectual property shall be prima facie

1 evidence of the facts stated therein.

2 (h) Remedies cumulative.--The remedies provided for in this
3 section shall be cumulative to the other civil and criminal
4 remedies provided by law.

5 (i) Definitions.--As used in this section, the following
6 words and phrases shall have the meanings given to them in this
7 subsection:

8 "Counterfeit mark." Any of the following:

9 (1) Any unauthorized reproduction or copy of
10 intellectual property.

11 (2) Intellectual property affixed to any item knowingly
12 sold, offered for sale, manufactured or distributed or
13 identifying services offered or rendered, without the
14 authority of the owner of the intellectual property.

15 "Intellectual property." Any trademark, service mark, trade
16 name, label, term, device, design or word adopted or used by a
17 person to identify that person's goods or services.

18 "Retail value." The counterfeiter's regular selling price
19 for the item or service bearing or identified by the counterfeit
20 mark. In the case of items bearing a counterfeit mark which are
21 components of a finished product, the retail value shall be the
22 counterfeiter's regular selling price of the finished product on
23 or in which the component would be utilized.

24 Section 2. This act shall take effect in 60 days.