

---

**By: Delegates Montague, T. Murphy, and Harkins**

Introduced and read first time: February 1, 1996

Assigned to: Judiciary

---

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 1996

---

CHAPTER \_\_\_\_

1 AN ACT concerning

2 **Trademark Counterfeiting**

3 FOR the purpose of creating the criminal offense of trademark counterfeiting; providing  
4 for the seizure and transfer of certain items to the owner of intellectual property  
5 under certain circumstances; establishing a certain statute of limitations for certain  
6 actions or prosecutions; establishing that certain registration of certain intellectual  
7 property is prima facie evidence of a trademark or trade name; making certain items  
8 subject to seizure by a law enforcement officer for a certain purpose; establishing  
9 certain penalties; defining certain terms; and generally relating to the criminal  
10 offense of trademark counterfeiting.

11 BY adding to

12 Article 27 - Crimes and Punishments

13 Section 48A

14 Annotated Code of Maryland

15 (1992 Replacement Volume and 1995 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article 27 - Crimes and Punishments**

19 48A.

20 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
21 INDICATED.

22 (2) "COUNTERFEIT MARK" MEANS:

2

1 (I) AN UNAUTHORIZED REPRODUCTION OR COPY OF  
2 INTELLECTUAL PROPERTY; OR

3 (II) INTELLECTUAL PROPERTY AFFIXED TO ITEMS KNOWINGLY  
4 SOLD, OFFERED FOR SALE, MANUFACTURED, OR DISTRIBUTED, OR IDENTIFYING  
5 SERVICES OFFERED OR RENDERED, WITHOUT THE AUTHORITY OF THE OWNER OF  
6 THE INTELLECTUAL PROPERTY.

7 (3) "INTELLECTUAL PROPERTY" MEANS A TRADEMARK, SERVICE  
8 MARK, TRADE NAME, LABEL, TERM, DEVICE, DESIGN, OR WORD ADOPTED OR USED  
9 BY A PERSON TO IDENTIFY THE PERSON'S GOODS OR SERVICES.

10 (4) "RETAIL VALUE" MEANS:

11 (I) THE TRADEMARK COUNTERFEITER'S SELLING PRICE FOR THE  
12 ITEMS OR SERVICES BEARING OR IDENTIFIED BY THE COUNTERFEIT MARK; OR

13 (II) THE TRADEMARK COUNTERFEITER'S SELLING PRICE OF THE  
14 FINISHED PRODUCT, IF ITEMS BEARING A COUNTERFEIT MARK ARE COMPONENTS  
15 OF A FINISHED PRODUCT.

16 (B) A PERSON COMMITS THE OFFENSE OF TRADEMARK COUNTERFEITING  
17 WHEN THE PERSON WILLFULLY MANUFACTURES, PRODUCES, ~~USES~~, DISPLAYS,  
18 ADVERTISES, DISTRIBUTES, OFFERS FOR SALE, SELLS, OR POSSESSES WITH THE  
19 INTENT TO SELL OR DISTRIBUTE ITEMS OR SERVICES THAT THE PERSON KNOWS  
20 ARE BEARING OR IDENTIFIED BY A COUNTERFEIT MARK.

21 (C) A PERSON CONVICTED OF TRADEMARK COUNTERFEITING WHERE THE  
22 AGGREGATE RETAIL VALUE OF THE ITEMS OR SERVICES IS \$ 1,000 OR GREATER IS  
23 GUILTY OF A FELONY AND SHALL:

24 (1) ~~RESTORE~~ TRANSFER ALL OF THE ITEMS TO THE OWNER OF THE  
25 INTELLECTUAL PROPERTY; AND

26 (2) BE FINED NOT MORE THAN \$10,000 OR IMPRISONED FOR NOT MORE  
27 THAN 15 YEARS OR BOTH.

28 (D) (1) A PERSON CONVICTED OF TRADEMARK COUNTERFEITING WHERE  
29 THE AGGREGATE RETAIL VALUE OF THE ITEMS OR SERVICES IS LESS THAN \$1,000 IS  
30 GUILTY OF A MISDEMEANOR AND SHALL:

31 (I) ~~RESTORE~~ TRANSFER ALL OF THE ITEMS TO THE OWNER OF  
32 THE INTELLECTUAL PROPERTY; AND

33 (II) BE FINED NOT MORE THAN \$1,000 OR IMPRISONED FOR NOT  
34 MORE THAN 18 MONTHS OR BOTH.

35 (2) ALL ACTIONS OR PROSECUTIONS FOR TRADEMARK  
36 COUNTERFEITING WHERE THE AGGREGATE RETAIL VALUE OF THE ITEMS OR  
37 SERVICES IS LESS THAN \$1,000 SHALL BE COMMENCED WITHIN 2 YEARS AFTER THE  
38 COMMISSION OF THE OFFENSE.

3

1 (E) A PERSON CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION OF  
2 SUBSECTION (D) OF THIS SECTION IS SUBJECT TO A FINE OF NOT MORE THAN \$5,000.

3 (F) AN ITEM BEARING A COUNTERFEIT MARK IS SUBJECT TO SEIZURE BY A  
4 LAW ENFORCEMENT OFFICER FOR PRESERVATION OF THE ITEM FOR ~~RESTORATION~~  
5 TRANSFER TO THE OWNER OF THE INTELLECTUAL PROPERTY UNDER AN  
6 AGREEMENT WITH THE PERSON ALLEGED TO HAVE COMMITTED THE OFFENSE OR  
7 AFTER CONVICTION UNDER THIS SECTION.

8 (G) STATE OR FEDERAL REGISTRATION OF INTELLECTUAL PROPERTY IS  
9 PRIMA FACIE EVIDENCE THAT THE INTELLECTUAL PROPERTY IS A TRADEMARK OR  
10 TRADE NAME.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 1996.