
By: Senators Stone and Pica

Introduced and read first time: January 31, 1996

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: February 22, 1996

CHAPTER ____

1 AN ACT concerning

2 **Trademark Counterfeiting**

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

9 BY adding to
10 Article 27 - Crimes and Punishments
11 Section 48A
12 Annotated Code of Maryland
13 (1992 Replacement Volume and 1995 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article 27 - Crimes and Punishments**

17 48A.

18 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

20 (2) "COUNTERFEIT MARK" MEANS:

21 (I) AN UNAUTHORIZED REPRODUCTION OR COPY OF
22 INTELLECTUAL PROPERTY; OR

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

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

8 (4) "RETAIL VALUE" MEANS:

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

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

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

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

22 (1) RESTORE ALL OF THE ITEMS TO THE OWNER OF THE INTELLECTUAL
23 PROPERTY; AND

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

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

29 (I) RESTORE ALL OF THE ITEMS TO THE OWNER OF THE
30 INTELLECTUAL PROPERTY; AND

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

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

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

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1 (F) AN ITEM BEARING A COUNTERFEIT MARK IS SUBJECT TO SEIZURE BY A
2 LAW ENFORCEMENT OFFICER FOR PRESERVATION OF THE ITEM FOR RESTORATION
3 TO THE OWNER OF THE INTELLECTUAL PROPERTY AFTER A CONVICTION UNDER
4 THIS SECTION.

5 (G) STATE OR FEDERAL REGISTRATION OF INTELLECTUAL PROPERTY IS
6 PRIMA FACIE EVIDENCE THAT THE INTELLECTUAL PROPERTY IS A TRADEMARK OR
7 TRADE NAME.

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