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**By: Chairman, Judicial Proceedings Committee (Departmental - Secretary of State)**

Requested: November 15, 1996

Introduced and read first time: January 8, 1997

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Trademark Counterfeiting - State Registration**

3 FOR the purpose of repealing a provision of law that, for purposes of proving the offense  
4 of trademark counterfeiting, provides that State registration of intellectual property  
5 is prima facie evidence that it is a trademark or trade name.

6 BY repealing and reenacting, with amendments,  
7 Article 27 - Crimes and Punishments  
8 Section 48A  
9 Annotated Code of Maryland  
10 (1996 Replacement Volume)

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

13 **Article 27 - Crimes and Punishments**

14 48A.

15 (a) (1) In this section the following words have the meanings indicated.

16 (2) "Counterfeit mark" means:

17 (i) An unauthorized reproduction or copy of intellectual property; or

18 (ii) Intellectual property affixed to items knowingly sold, offered for  
19 sale, manufactured, or distributed, or identifying services offered or rendered, without  
20 the authority of the owner of the intellectual property.

21 (3) "Intellectual property" means a trademark, service mark, trade name,  
22 label, term, device, design, or word adopted or used by a person to identify the person's  
23 goods or services.

24 (4) "Retail value" means:

25 (i) The trademark counterfeiter's selling price for the items or  
26 services bearing or identified by the counterfeit mark; or

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1 (ii) The trademark counterfeiter's selling price of the finished product,  
2 if items bearing a counterfeit mark are components of a finished product.

3 (b) A person commits the offense of trademark counterfeiting when the person  
4 willfully manufactures, produces, displays, advertises, distributes, offers for sale, sells, or  
5 possesses with the intent to sell or distribute items or services that the person knows are  
6 bearing or identified by a counterfeit mark.

7 (c) A person convicted of trademark counterfeiting where the aggregate retail  
8 value of the items or services is \$1,000 or greater is guilty of a felony and shall:

9 (1) Transfer all of the items to the owner of the intellectual property; and

10 (2) Be fined not more than \$10,000 or imprisoned for not more than 15  
11 years or both.

12 (d) (1) A person convicted of trademark counterfeiting where the aggregate  
13 retail value of the items or services is less than \$1,000 is guilty of a misdemeanor and  
14 shall:

15 (i) Transfer all of the items to the owner of the intellectual property;  
16 and

17 (ii) Be fined not more than \$1,000 or imprisoned for not more than 18  
18 months or both.

19 (2) All actions or prosecutions for trademark counterfeiting where the  
20 aggregate retail value of the items or services is less than \$1,000 shall be commenced  
21 within 2 years after the commission of the offense.

22 (e) A person convicted of a second or subsequent violation of subsection (d) of  
23 this section is subject to a fine of not more than \$5,000.

24 (f) An item bearing a counterfeit mark is subject to seizure by a law enforcement  
25 officer for preservation of the item for transfer to the owner of the intellectual property  
26 under an agreement with the person alleged to have committed the offense or after  
27 conviction under this section.

28 (g) [State or federal] FEDERAL registration of intellectual property is prima  
29 facie evidence that the intellectual property is a trademark or trade name.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 October 1, 1997.