

SENATE BILL 40

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1998 Regular Session  
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(PRE-FILED)

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By: **Senator Baker**

Requested: November 7, 1997

Introduced and read first time: January 14, 1998

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Trademark Counterfeiting - Marks of Olympic Committees**

3 FOR the purpose of altering the definition of "intellectual property" under certain  
4 provisions of law that make trademark counterfeiting a criminal offense to  
5 include the words, names, symbols, emblems, signs, insignias, or combination of  
6 two or more of these, of the United States Olympic Committee or the  
7 International Olympic Committee; altering the definition of "mark" under  
8 certain provisions of law governing the registration of trademarks and service  
9 marks with the Secretary of State and civil remedies for infringement of a  
10 registered mark to include the words, names, symbols, emblems, signs,  
11 insignias, or combination of two or more of these, of the United States Olympic  
12 Committee or the International Olympic Committee; and generally relating to  
13 protection of the trademark rights of the United States Olympic Committee and  
14 the International Olympic Committee.

15 BY repealing and reenacting, with amendments,  
16 Article 27 - Crimes and Punishments  
17 Section 48A  
18 Annotated Code of Maryland  
19 (1996 Replacement Volume and 1997 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article - Business Regulation  
22 Section 1-401(c)  
23 Annotated Code of Maryland  
24 (1992 Volume and 1997 Supplement)

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

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**Article 27 - Crimes and Punishments**

2 48A.

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

4 (2) "Counterfeit mark" means:

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

6 or

7 (ii) Intellectual property affixed to items knowingly sold, offered for  
8 sale, manufactured, or distributed, or identifying services offered or rendered,  
9 without the authority of the owner of the intellectual property.10 (3) (I) "Intellectual property" means a trademark, service mark, trade  
11 name, label, term, device, design, or word adopted or used by a person to identify the  
12 person's goods or services.13 (II) "INTELLECTUAL PROPERTY" INCLUDES THE WORDS, NAMES,  
14 SYMBOLS, EMBLEMS, SIGNS, INSIGNIAS, OR COMBINATION OF TWO OR MORE OF  
15 THESE, OF THE UNITED STATES OLYMPIC COMMITTEE OR THE INTERNATIONAL  
16 OLYMPIC COMMITTEE.

17 (4) "Retail value" means:

18 (i) The trademark counterfeiter's selling price for the items or  
19 services bearing or identified by the counterfeit mark; or20 (ii) The trademark counterfeiter's selling price of the finished  
21 product, if items bearing a counterfeit mark are components of a finished product.22 (b) A person commits the offense of trademark counterfeiting when the person  
23 willfully manufactures, produces, displays, advertises, distributes, offers for sale,  
24 sells, or possesses with the intent to sell or distribute items or services that the person  
25 knows are bearing or identified by a counterfeit mark.26 (c) A person convicted of trademark counterfeiting where the aggregate retail  
27 value of the items or services is \$1,000 or greater is guilty of a felony and shall:

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

29 (2) Be fined not more than \$10,000 or imprisoned for not more than 15  
30 years or both.31 (d) (1) A person convicted of trademark counterfeiting where the aggregate  
32 retail value of the items or services is less than \$1,000 is guilty of a misdemeanor and  
33 shall:34 (i) Transfer all of the items to the owner of the intellectual  
35 property; and

1 (ii) Be fined not more than \$1,000 or imprisoned for not more than  
2 18 months or both.

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

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

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

12 (g) State or federal registration of intellectual property is prima facie evidence  
13 that the intellectual property is a trademark or trade name.

#### 14 **Article - Business Regulation**

15 1-401.

16 (c) (1) "Mark" means a name, symbol, word, or combination of 2 or more of  
17 these that a person:

18 [(1)] (I) places on goods that the person sells or distributes, a container  
19 of the goods, a display associated with the goods, or a label or tag affixed to the goods  
20 to identify those goods that the person makes or sells and to distinguish them from  
21 goods that another person makes or sells; or

22 [(2)] (II) displays or otherwise uses to advertise or sell services that the  
23 person performs to identify those services that the person performs and to distinguish  
24 them from services that another person performs.

25 (2) "MARK" INCLUDES THE WORDS, NAMES, SYMBOLS, EMBLEMS, SIGNS,  
26 INSIGNIAS, OR COMBINATION OF TWO OR MORE OF THESE, OF THE UNITED STATES  
27 OLYMPIC COMMITTEE OR THE INTERNATIONAL OLYMPIC COMMITTEE.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 1998.