

SENATE BILL 40

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1998 Regular Session
8lr0684
CF 8lr2148

(PRE-FILED)

By: ~~Senator Baker~~ **Senators Baker and Forehand**

Requested: November 7, 1997

Introduced and read first time: January 14, 1998

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 3, 1998

CHAPTER _____

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(e)~~
23 ~~Annotated Code of Maryland~~
24 ~~(1992 Volume and 1997 Supplement)~~

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

3 **Article 27 - Crimes and Punishments**

4 48A.

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

6 (2) "Counterfeit mark" means:

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

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

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

15 (II) "INTELLECTUAL PROPERTY" INCLUDES THE WORDS, NAMES,
16 SYMBOLS, EMBLEMS, SIGNS, INSIGNIAS, OR COMBINATION OF TWO OR MORE OF
17 THESE, OF THE UNITED STATES OLYMPIC COMMITTEE OR THE INTERNATIONAL
18 OLYMPIC COMMITTEE.

19 (4) "Retail value" means:

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

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

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

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

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

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

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

4 (i) Transfer all of the items to the owner of the intellectual
5 property; and

6 (ii) Be fined not more than \$1,000 or imprisoned for not more than
7 18 months or both.

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

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

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

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

19 **Article -- Business Regulation**

20 ~~1-401.~~

21 (e) (1) ~~"Mark" means a name, symbol, word, or combination of 2 or more of~~
22 ~~these that a person:~~

23 ~~[(1)] (I) places on goods that the person sells or distributes, a container~~
24 ~~of the goods, a display associated with the goods, or a label or tag affixed to the goods~~
25 ~~to identify those goods that the person makes or sells and to distinguish them from~~
26 ~~goods that another person makes or sells; or~~

27 ~~[(2)] (II) displays or otherwise uses to advertise or sell services that the~~
28 ~~person performs to identify those services that the person performs and to distinguish~~
29 ~~them from services that another person performs.~~

30 ~~(2) "MARK" INCLUDES THE WORDS, NAMES, SYMBOLS, EMBLEMS, SIGNS,~~
31 ~~INSIGNIAS, OR COMBINATION OF TWO OR MORE OF THESE, OF THE UNITED STATES~~
32 ~~OLYMPIC COMMITTEE OR THE INTERNATIONAL OLYMPIC COMMITTEE.~~

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

