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Union Calendar No. 270

104TH CONGRESS
2D SESSION

H. R. 2511

[Report No. 104-556]

To control and prevent commercial counterfeiting, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 19, 1995

Mr. GOODLATTE (for himself, Mr. HYDE, Mr. CONYERS, Mr. MOORHEAD, Mr. MCCOLLUM, Mr. FRANK of Massachusetts, Mr. GEKAS, Mr. SMITH of Texas, Mr. COBLE, Mr. CANADY of Florida, Mr. BONO, Mr. HEINEMAN, Mr. FLANAGAN, and Mr. DAVIS) introduced the following bill; which was referred to the Committee on the Judiciary

MAY 6, 1996

Additional sponsor: Mrs. MALONEY

MAY 6, 1996

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To control and prevent commercial counterfeiting, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Anticounterfeiting
3 Consumer Protection Act of 1995”.

4 **SEC. 2. COUNTERFEITING AS RACKETEERING.**

5 Section 1961(1)(B) of title 18, United States Code,
6 is amended by inserting “, section 2318 (relating to traf-
7 ficking in counterfeit labels for phonorecords, computer
8 programs or computer program documentation or packag-
9 ing and copies of motion pictures or other audiovisual
10 works), section 2319 (relating to criminal infringement of
11 a copyright), section 2320 (relating to trafficking in goods
12 or services bearing counterfeit marks)” after “sections
13 2314 and 2315 (relating to interstate transportation of
14 stolen property),”.

15 **SEC. 3. APPLICATION TO COMPUTER PROGRAMS, COM-
16 PUTER PROGRAM DOCUMENTATION, OR
17 PACKAGING.**

18 Section 2318 of title 18, United States Code, is
19 amended—

20 (1) in subsection (a), by inserting “a computer
21 program or computer program documentation or
22 packaging or” after “copy of”;

23 (2) in subsection (b)(3), by inserting “‘com-
24 puter program,’” after “‘motion picture,’”; and

1 (3) in subsection (c)(3), by inserting “a copy of
2 a computer program or computer program docu-
3 mentation or packaging,” after “enclose,”.

4 **SEC. 4. TRAFFICKING IN COUNTERFEIT GOODS OR SERV-**
5 **ICES.**

6 Section 2320 of title 18, United States Code, is
7 amended by adding at the end the following:

8 “(e) Beginning with the first year after the date of
9 the enactment of this subsection, the Attorney General
10 shall include in the report of the Attorney General to Con-
11 gress on the business of the Department of Justice pre-
12 pared pursuant to section 522 of title 28, on a district
13 by district basis, for all actions involving trafficking in
14 counterfeit labels for phonorecords, copies of computer
15 programs or computer program documentation or packag-
16 ing, copies of motion pictures or other audiovisual works
17 (as defined in section 2318 of title 18), criminal infringe-
18 ment of copyrights (as defined in section 2319 of title 18),
19 or trafficking in goods or services bearing counterfeit
20 marks (as defined in section 2320 of title 18), an account-
21 ing of—

22 “(1) the number of open investigations;

23 “(2) the number of cases referred by the United
24 States Customs Service;

1 “(3) the number of cases referred by other
2 agencies or sources; and

3 “(4) the number and outcome, including settle-
4 ments, sentences, recoveries, and penalties, of all
5 prosecutions brought under sections 2318, 2319,
6 and 2320 to title 18.”.

7 **SEC. 5. SEIZURE OF COUNTERFEIT GOODS.**

8 Section 34(d)(9) of the Act of July 5, 1946 (com-
9 monly known as the Lanham Act) (15 U.S.C. 1116(d)(9))
10 is amended by striking the first sentence and inserting the
11 following: “A court may order the seizure of an aircraft,
12 vehicle, or vessel used in connection with a violation of
13 this Act. The court shall order that service of a copy of
14 the order under this subsection shall be made by a Federal
15 law enforcement officer (such as a United States marshal
16 or an officer or agent of the United States Customs Serv-
17 ice, Secret Service, Federal Bureau of Investigation, or the
18 United States Postal Service) or may be made by a State
19 or local law enforcement officer, who, upon making serv-
20 ice, shall carry out the seizure under the order.”.

1 **SEC. 6. DISPOSITION OF MERCHANDISE BEARING COUN-**
2 **TERFEIT AMERICAN TRADEMARK AND CIVIL**
3 **PENALTIES.**

4 Title VI of the Act of July 5, 1946 (commonly known
5 as the Lanham Act) (15 U.S.C. 1114 and following) is
6 amended by inserting after section 34 the following:

7 “SEC. 34A. (a) Any merchandise bearing a counter-
8 feit mark (as defined in section 45) imported into the
9 United States in violation of section 42 shall be seized by
10 the appropriate Federal official and, in the absence of the
11 written consent of the trademark owner, forfeited. Upon
12 seizure of such merchandise, the appropriate official shall
13 notify the owner of the trademark, and shall, after forfeit-
14 ure, destroy the merchandise. Alternatively, if the mer-
15 chandise is not unsafe or a hazard to health, and the offi-
16 cial has the consent of the trademark owner, the appro-
17 priate official may obliterate the trademark where feasible
18 and dispose of the goods seized—

19 “(1) by delivery to such Federal, State, and
20 local government agencies as in the opinion of the
21 appropriate official have a need for such merchan-
22 dise;

23 “(2) by gift to such eleemosynary institutions
24 as in the opinion of the appropriate official have a
25 need for such merchandise; or

1 “(3) more than 1 year after the date of forfeit-
2 ure, by sale by appropriate officials at public auc-
3 tion, except that before making any such sale the of-
4 ficial shall determine that no Federal, State, or local
5 government agency or eleemosynary institution has
6 established a need for such merchandise under para-
7 graph (1) or (2).

8 “(b)(1) Any person who directs, assists financially or
9 otherwise, or is in any way concerned in the importation
10 of merchandise for sale or public distribution that is seized
11 under subsection (a) shall be subject to a civil fine.

12 “(2) For the first such seizure, the fine shall be equal
13 to the value that the merchandise would have had if it
14 were genuine, according to the manufacturer’s suggested
15 retail price, as determined under regulations prescribed by
16 the Secretary of the Treasury.

17 “(3) For the second seizure and thereafter, the fine
18 shall be equal to twice the value that the merchandise
19 would have had if it were genuine, according to the manu-
20 facturer’s suggested retail price, as determined under reg-
21 ulations prescribed by the Secretary of the Treasury.

22 “(4) The imposition of a fine under this subsection
23 shall be within the discretion of the court, and shall be
24 in addition to any other civil or criminal penalty or other
25 remedy authorized by law.”.

1 **SEC. 7. RECOVERY FOR VIOLATION OF RIGHTS.**

2 Section 35 of the Act of July 5, 1946 (commonly
3 known as the Lanham Act) (15 U.S.C. 1117), is amended
4 by adding at the end the following:

5 “(c) In a case involving the use of a counterfeit mark
6 (as defined in section 34(d)) in connection with the sale,
7 offering for sale, or distribution of goods or services, the
8 plaintiff may elect, at any time before final judgment is
9 rendered by the trial court, to recover, instead of actual
10 damages and profits under subsection (a), an award of
11 statutory damages for any such use in the amount of—

12 “(1) not less than \$500 or more than \$100,000
13 per counterfeit mark per type of goods or services
14 sold, offered for sale, or distributed, as the court
15 considers just; or

16 “(2) if the court finds that the use of the coun-
17 terfeit mark was willful, not more than \$1,000,000
18 per counterfeit mark per type of goods or services
19 sold, offered for sale, or distributed, as the court
20 considers just.”.

21 **SEC. 8. DISPOSITION OF EXCLUDED ARTICLES.**

22 Section 603(c) of title 17, United States Code, is
23 amended in the second sentence by striking “as the case
24 may be;” and all that follows through the end and insert-
25 ing “as the case may be.”.

1 **SEC. 9. RECORDKEEPING REQUIREMENTS.**

2 Section 42 of the Act of July 5, 1946 (commonly
3 known as the Lanham Act) (15 U.S.C. 1124) is
4 amended—

5 (1) by inserting “(a)” after “SEC. 42.”; and

6 (2) by adding at the end the following:

7 “(b)(1) The owner, registrant, or authorized user of
8 a trademark registered under this Act, and any authorized
9 agent or representative thereof, shall be entitled to obtain
10 from the appropriate Federal officers in a timely manner
11 the following information when contained in a vessel or
12 aircraft manifest:

13 “(A) The name and address of each importer or
14 consignee and the name and address of the shipper
15 to such importer or consignee, unless the importer
16 or consignee has made a biennial certification, in ac-
17 cordance with procedures adopted by the Secretary
18 of the Treasury, claiming confidential treatment of
19 such information.

20 “(B) The general character of the cargo.

21 “(C) The number of packages and gross weight.

22 “(D) The name of the vessel or aircraft.

23 “(E) The port of loading.

24 “(F) The port of discharge.

25 “(G) The country of origin of the shipment.

1 “(2) The documentation relating to the entry into the
2 United States of imported merchandise shall contain such
3 information as may be necessary to determine whether the
4 merchandise bears an infringing trademark in violation of
5 subsection (a) or any other applicable law, including a
6 trademark appearing on goods or packaging.”.

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