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104TH CONGRESS
1ST SESSION

S. 1136

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

IN THE SENATE OF THE UNITED STATES

AUGUST 9 (legislative day, JULY 10), 1995

Mr. HATCH (for himself, Mr. LEAHY, Mr. THURMOND, Mr. BROWN, Mr. KYL, Mr. ABRAHAM, and Mrs. Feinstein) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anticounterfeiting
5 Consumer Protection Act of 1995”.

6 **SEC. 2. FINDINGS.**

7 The counterfeiting of trademarked and copyrighted
8 merchandise—

9 (1) has been connected with organized crime;

1 (2) deprives legitimate trademark and copyright
2 owners of substantial revenues and consumer good-
3 will;

4 (3) poses health and safety threats to American
5 consumers;

6 (4) eliminates American jobs; and

7 (5) is a multibillion-dollar drain on the United
8 States economy.

9 **SEC. 3. COUNTERFEITING AS RACKETEERING.**

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

20 **SEC. 4. APPLICATION TO COMPUTER PROGRAMS, COM-**
21 **PUTER PROGRAM DOCUMENTATION, OR**
22 **PACKAGING.**

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

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

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

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

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

11 Section 2320 of title 18, United States Code, is
12 amended by adding at the end the following new sub-
13 section:

14 “(e) Beginning with the first year after the date of
15 enactment of this subsection, the Attorney General shall
16 include in the report of the Attorney General to Congress
17 on the business of the Department of Justice prepared
18 pursuant to section 522 of title 28, on a district by district
19 basis, for all actions involving trafficking in counterfeit la-
20 bels for phonorecords, copies of computer programs or
21 computer program documentation or packaging, copies of
22 motion pictures or other audiovisual works (as defined in
23 section 2318 of title 18), criminal infringement of copy-
24 rights (as defined in section 2319 of title 18), or traffick-

1 ing in goods or services bearing counterfeit marks (as de-
2 fined in section 2320 of title 18, an accounting of—

3 “(1) the number of open investigations;

4 “(2) the number of cases referred by the United
5 States Customs Service;

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

8 “(4) the number and outcome, including settle-
9 ments, sentences, recoveries, and penalties, of all
10 prosecutions brought under sections 2318, 2319,
11 and 2320 of title 18.”.

12 **SEC. 6. SEIZURE OF COUNTERFEIT GOODS.**

13 Section 34(d)(9) of the Act of July 5, 1946 (60 Stat.
14 427, chapter 540; 15 U.S.C. 1116(d)(9)), is amended by
15 striking the first sentence and inserting the following:
16 “The court shall order that service of a copy of the order
17 under this subsection shall be made by a Federal law en-
18 forcement officer (such as a United States marshal or an
19 officer or agent of the United States Customs Service, Se-
20 cret Service, Federal Bureau of Investigation, or Post Of-
21 fice) or may be made by a State or local law enforcement
22 officer, who, upon making service, shall carry out the sei-
23 zure under the order.”.

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

2 Section 35 of the Act of July 5, 1946 (60 Stat. 427,
3 chapter 540; 15 U.S.C. 1117), is amended by adding at
4 the end the following new subsection:

5 “(c) In a case involving the use of a counterfeit mark
6 (as defined in section 34(d) (15 U.S.C. 1116(d)) in con-
7 nection with the sale, offering for sale, or distribution of
8 goods or services, the plaintiff may elect, at any time be-
9 fore final judgment is rendered by the trial court, to re-
10 cover, instead of actual damages and profits under sub-
11 section (a), an award of statutory damages for any such
12 use in the amount of—

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

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

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

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

1 **SEC. 9. DISPOSITION OF MERCHANDISE BEARING AMER-**
 2 **ICAN TRADEMARK.**

3 Section 526(e) of the Tariff Act of 1930 (19 U.S.C.
 4 1526(e)) is amended—

5 (1) in the second sentence, by inserting “de-
 6 stroy the merchandise. Alternatively, if the merchan-
 7 dise is not unsafe or a hazard to health, and the
 8 Secretary has the consent of the trademark owner,
 9 the Secretary may” after “shall, after forfeiture,”;

10 (2) by inserting “or” at the end of paragraph
 11 (2);

12 (3) by striking “, or” at the end of paragraph
 13 (3) and inserting a period; and

14 (4) by striking paragraph (4).

15 **SEC. 10. CIVIL PENALTIES.**

16 Section 526 of the Tariff Act of 1930 (19 U.S.C.
 17 1526) is amended by adding at the end the following new
 18 subsection:

19 “(f)(1) Any person who directs, assists financially or
 20 otherwise, or is in any way concerned in the importation
 21 of merchandise for sale or public distribution that is seized
 22 under subsection (e) shall be subject to a civil fine.

23 “(2) For the first such seizure, the fine shall be equal
 24 to the value that the merchandise would have had if it
 25 were genuine, according to the manufacturer’s suggested

1 retail price, determined under regulations promulgated by
2 the Secretary.

3 “(3) For the second seizure and thereafter, the fine
4 shall be equal to twice the value that the merchandise
5 would have had if it were genuine, as determined under
6 regulations promulgated by the Secretary.

7 “(4) The imposition of a fine under this subsection
8 shall be within the discretion of the United States Cus-
9 toms Service, and shall be in addition to any other civil
10 or criminal penalty or other remedy authorized by law.”.

11 **SEC. 11. PUBLIC DISCLOSURE OF AIRCRAFT MANIFESTS.**

12 Section 431(c)(1) of the Tariff Act of 1930 (19
13 U.S.C. 1431(c)(1)) is amended—

14 (1) in the matter preceding subparagraph (A),
15 by inserting “vessel or aircraft” before “manifest”;

16 (2) by amending subparagraph (D) to read as
17 follows:

18 “(D) The name of the vessel, aircraft, or car-
19 rier.”;

20 (3) by amending subparagraph (E) to read as
21 follows:

22 “(E) The seaport or airport of loading.”; and

23 (4) by amending subparagraph (F) to read as
24 follows:

25 “(F) The seaport or airport of discharge.”.

1 **SEC. 12. CUSTOMS ENTRY DOCUMENTATION.**

2 Section 484(d) of the Tariff Act of 1930 (19 U.S.C.
3 1484(d)) is amended—

4 (1) by striking “Entries” and inserting “(1)
5 Entries”; and

6 (2) by adding at the end the following new
7 paragraph:

8 “(2) The Secretary, in prescribing regulations gov-
9 erning the content of entry documentation, shall require
10 that entry documentation contain such information as may
11 be necessary to determine whether the imported merchan-
12 dise bears an infringing trademark in violation of section
13 42 of the Act of July 5, 1946 (60 Stat. 440, chapter 540;
14 15 U.S.C. 1124) or any other applicable law, including
15 a trademark appearing on the goods or packaging.”.

16 **SEC. 13. UNLAWFUL USE OF VESSELS, VEHICLES, AND AIR-**
17 **CRAFT IN AID OF COMMERCIAL COUNTER-**
18 **FEITING.**

19 Section 80302(a) of title 49, United States Code, is
20 amended—

21 (1) by striking “or” at the end of paragraph
22 (4);

23 (2) by striking the period at the end of para-
24 graph (5) and inserting “; or”; and

25 (3) by adding at the end the following new
26 paragraph:

1 “(6)(A) A counterfeit label for a phonorecord,
2 computer program or computer program documenta-
3 tion or packaging or copy of a motion picture or
4 other audiovisual work (as defined in section 2318
5 of title 18);

6 “(B) a phonorecord or copy in violation of sec-
7 tion 2319 of title 18; or

8 “(C) any good bearing a counterfeit mark (as
9 defined in section 2320 of title 18).”.

10 **SEC. 14. REGULATIONS.**

11 Not later than 6 months after the date of enactment
12 of this Act, the Secretary of the Treasury shall prescribe
13 such regulations or amendments to existing regulations
14 that may be necessary to implement and enforce this Act.

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