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104TH CONGRESS
1ST SESSION

H. R. 2511

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

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. COUNTERFEITING AS RACKETEERING.**

7 Section 1961(1)(B) of title 18, United States Code,
8 is amended by inserting " , section 2318 (relating to traf-
9 ficking in counterfeit labels for phonorecords, computer

1 programs or computer program documentation or packag-
2 ing and copies of motion pictures or other audiovisual
3 works), section 2319 (relating to criminal infringement of
4 a copyright), section 2320 (relating to trafficking in goods
5 or services bearing counterfeit marks)” after “sections
6 2314 and 2315 (relating to interstate transportation of
7 stolen property),”.

8 **SEC. 3. APPLICATION TO COMPUTER PROGRAMS, COM-**
9 **PUTER PROGRAM DOCUMENTATION, OR**
10 **PACKAGING.**

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

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

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

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

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

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

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

15 “(1) the number of open investigations;

16 “(2) the number of cases referred by the United
17 States Customs Service;

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

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

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

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

15 **SEC. 6. DISPOSITION OF MERCHANDISE BEARING COUN-**
16 **TERFEIT AMERICAN TRADEMARK AND CIVIL**
17 **PENALTIES.**

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

21 "SEC. 34A. (a) Any merchandise bearing a counter-
22 feit mark (as defined in section 45) imported into the
23 United States in violation of section 42 shall be seized by
24 the appropriate Federal official and, in the absence of the
25 written consent of the trademark owner, forfeited. Upon
26 seizure of such merchandise, the appropriate official shall

1 notify the owner of the trademark, and shall, after forfeit-
2 ure, destroy the merchandise. Alternatively, if the mer-
3 chandise is not unsafe or a hazard to health, and the offi-
4 cial has the consent of the trademark owner, the appro-
5 priate official may obliterate the trademark where feasible
6 and dispose of the goods seized—

7 “(1) by delivery to such Federal, State, and
8 local government agencies as in the opinion of the
9 appropriate official have a need for such merchan-
10 dise;

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **SEC. 9. RECORDKEEPING REQUIREMENTS.**

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

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

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

21 “(b)(1) The owner, registrant, or authorized user of
22 a trademark registered under this Act, and any authorized
23 agent or representative thereof, shall be entitled to obtain
24 from the appropriate Federal officers in a timely manner

1 the following information when contained in a vessel or
2 aircraft manifest:

3 “(A) The name and address of each importer or
4 consignee and the name and address of the shipper
5 to such importer or consignee, unless the importer
6 or consignee has made a biennial certification, in ac-
7 cordance with procedures adopted by the Secretary
8 of the Treasury, claiming confidential treatment of
9 such information.

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

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

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

13 “(E) The port of loading.

14 “(F) The port of discharge.

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

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

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