

Calendar No. 250

104TH CONGRESS
1ST Session

S. 1136

[Report No. 104-177]

A BILL

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

NOVEMBER 28, 1995

Reported with amendments

Calendar No. 250

104TH CONGRESS
1ST SESSION

S. 1136

[Report No. 104-177]

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, Mrs. FEINSTEIN, Mr. SIMPSON, Mr. D'AMATO, Mr. LAUTENBERG, Mr. HEFLIN, and Ms. MOSELEY-BRAUN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 28, 1995

Reported by Mr. HATCH with amendments

[Omit the part struck through and insert the part printed in *italic*]

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”.

1 **SEC. 2. FINDINGS.**

2 The counterfeiting of trademarked and copyrighted
3 merchandise—

4 (1) has been connected with organized crime;

5 (2) deprives legitimate trademark and copyright
6 owners of substantial revenues and consumer good-
7 will;

8 (3) poses health and safety threats to American
9 consumers;

10 (4) eliminates American jobs; and

11 (5) is a multibillion-dollar drain on the United
12 States economy.

13 **SEC. 3. COUNTERFEITING AS RACKETEERING.**

14 Section 1961(1)(B) of title 18, United States Code,
15 is amended by inserting “, section 2318 (relating to traf-
16 ficking in counterfeit labels for phonorecords, computer
17 programs or computer program documentation or packag-
18 ing and copies of motion pictures or other audiovisual
19 works), section 2319 (relating to criminal infringement of
20 a copyright), section 2320 (relating to trafficking in goods
21 or services bearing counterfeit marks)” after “sections
22 2314 and 2315 (relating to interstate transportation of
23 stolen property)”.

1 **SEC. 4. APPLICATION TO COMPUTER PROGRAMS, COM-**
2 **PUTER PROGRAM DOCUMENTATION, OR**
3 **PACKAGING.**

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

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

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

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

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

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

19 “(e) Beginning with the first year after the date of
20 enactment of this subsection, the Attorney General shall
21 include in the report of the Attorney General to Congress
22 on the business of the Department of Justice prepared
23 pursuant to section 522 of title 28, on a district by district
24 basis, for all actions involving trafficking in counterfeit la-
25 bels for phonorecords, copies of computer programs or
26 computer program documentation or packaging, copies of

1 motion pictures or other audiovisual works (as defined in
2 section 2318 of title 18), criminal infringement of copy-
3 rights (as defined in section 2319 of title 18), or traffick-
4 ing in goods or services bearing counterfeit marks (as de-
5 fined in section 2320 of title 18, an accounting of—

6 “(1) the number of open investigations;

7 “(2) the number of cases referred by the United
8 States Customs Service;

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

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

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

16 Section 34(d)(9) of the Act of July 5, 1946 (60 Stat.
17 427, chapter 540; 15 U.S.C. 1116(d)(9)), is amended by
18 striking the first sentence and inserting the following:

19 “The court shall order that service of a copy of the order
20 under this subsection shall be made by a Federal law en-
21 forcement officer (such as a United States marshal or an
22 officer or agent of the United States Customs Service, Se-
23 cret Service, Federal Bureau of Investigation, or Post Of-
24 fice) or may be made by a State or local law enforcement

1 officer, who, upon making service, shall carry out the sei-
2 zure under the order.”.

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

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

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

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

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

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

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

6 **SEC. 9. DISPOSITION OF MERCHANDISE BEARING AMER-**
 7 **ICAN TRADEMARK.**

8 Section 526(e) of the Tariff Act of 1930 (19 U.S.C.
 9 1526(e)) is amended—

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

15 (2) by inserting “or” at the end of paragraph
 16 (2);

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

19 (4) by striking paragraph (4).

20 **SEC. 10. CIVIL PENALTIES.**

21 Section 526 of the Tariff Act of 1930 (19 U.S.C.
 22 1526) is amended by adding at the end the following new
 23 subsection:

24 “(f)(1) Any person who directs, assists financially or
 25 otherwise, or is ~~in any way concerned in~~ *aids and abets*
 26 the importation of merchandise for sale or public distribu-

1 tion that is seized under subsection (e) shall be subject
2 to a civil fine.

3 “(2) For the first such seizure, the fine shall be ~~equal~~
4 ~~to~~ *not more than* the value that the merchandise would
5 have had if it were genuine, according to the manufactur-
6 er’s suggested retail price, determined under regulations
7 promulgated by the Secretary.

8 “(3) For the second seizure and thereafter, the fine
9 shall be ~~equal to~~ *not more than* twice the value that the
10 merchandise would have had if it were genuine, as deter-
11 mined under regulations promulgated by the Secretary.

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

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

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

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

21 (2) by amending subparagraph (D) to read as
22 follows:

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

1 (3) by amending subparagraph (E) to read as
2 follows:

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

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

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

7 **SEC. 12. CUSTOMS ENTRY DOCUMENTATION.**

8 Section 484(d) of the Tariff Act of 1930 (19 U.S.C.
9 1484(d)) is amended—

10 (1) by striking “Entries” and inserting “(1)
11 Entries”; and

12 (2) by adding at the end the following new
13 paragraph:

14 “(2) The Secretary, in prescribing regulations gov-
15 erning the content of entry documentation, shall require
16 that entry documentation contain such information as may
17 be necessary to determine whether the imported merchan-
18 dise bears an infringing trademark in violation of section
19 42 of the Act of July 5, 1946 (60 Stat. 440, chapter 540;
20 15 U.S.C. 1124) or any other applicable law, including
21 a trademark appearing on the goods or packaging.”.

1 **SEC. 13. UNLAWFUL USE OF VESSELS, VEHICLES, AND AIR-**
2 **CRAFT IN AID OF COMMERCIAL COUNTER-**
3 **FEITING.**

4 Section 80302(a) of title 49, United States Code, is
5 amended—

6 (1) by striking “or” at the end of paragraph
7 (4);

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

10 (3) by adding at the end the following new
11 paragraph:

12 “(6)(A) A counterfeit label for a phonorecord,
13 computer program or computer program documenta-
14 tion or packaging or copy of a motion picture or
15 other audiovisual work (as defined in section 2318
16 of title 18);

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

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

21 **SEC. 14. REGULATIONS.**

22 Not later than 6 months after the date of enactment
23 of this Act, the Secretary of the Treasury shall prescribe
24 such regulations or amendments to existing regulations
25 that may be necessary to implement and enforce this Act.