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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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SECTION 1. SHORT TITLE.

This Act may be cited as the "Anticounterfeiting Consumer Protection Act of 1995".

SEC. 2. COUNTERFEITING AS RACKETEERING.

Section 1961(1)(B) of title 18, United States Code, is amended by inserting ", section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2320 (relating to trafficking in goods or services bearing counterfeit marks)" after "sections 2314 and 2315 (relating to interstate transportation of stolen property),".

SEC. 3. APPLICATION TO COMPUTER PROGRAMS, COMPUTER PROGRAM DOCUMENTATION, OR PACKAGING.

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

(1) in subsection (a), by inserting "a computer program or computer program documentation or packaging or" after "copy of";

(2) in subsection (b)(3), by inserting "'computer program,'" after "'motion picture,'"; and

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(3) in subsection (c)(3), by inserting "a copy of a computer program or computer program documentation or packaging," after "enclose,".

SEC. 4. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.

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

"(e) Beginning with the first year after the date of the enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, on a district by district basis, for all actions involving trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works (as defined in section 2318 of title 18), criminal infringement of copyrights (as defined in section 2319 of title 18), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of title 18), an accounting of—

"(1) the number of open investigations;

"(2) the number of cases referred by the United States Customs Service;

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"(3) the number of cases referred by other agencies or sources; and

"(4) the number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under sections 2318, 2319, and 2320 to title 18.".

SEC. 5. SEIZURE OF COUNTERFEIT GOODS.

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

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SEC. 6. DISPOSITION OF MERCHANDISE BEARING COUNTERFEIT AMERICAN TRADEMARK AND CIVIL PENALTIES.

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

"SEC. 34A. (a) Any merchandise bearing a counterfeit mark (as defined in section 45) imported into the United States in violation of section 42 shall be seized by the appropriate Federal official and, in the absence of the written consent of the trademark owner, forfeited. Upon seizure of such merchandise, the appropriate official shall notify the owner of the trademark, and shall, after forfeiture, destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the official has the consent of the trademark owner, the appropriate official may obliterate the trademark where feasible and dispose of the goods seized—

"(1) by delivery to such Federal, State, and local government agencies as in the opinion of the appropriate official have a need for such merchandise;

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

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"(3) more than 1 year after the date of forfeiture, by sale by appropriate officials at public auction, except that before making any such sale the official shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2).

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

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

"(3) For the second seizure and thereafter, the fine shall be equal to twice the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, as determined under regulations prescribed by the Secretary of the Treasury.

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

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SEC. 7. RECOVERY FOR VIOLATION OF RIGHTS.

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

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

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

"(2) if the court finds that the use of the counterfeit mark was willful, not more than $1,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.".

SEC. 8. DISPOSITION OF EXCLUDED ARTICLES.

Section 603(c) of title 17, United States Code, is amended in the second sentence by striking "as the case may be;" and all that follows through the end and inserting "as the case may be.".

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SEC. 9. RECORDKEEPING REQUIREMENTS.

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

(1) by inserting "(a)" after "SEC. 42."; and

(2) by adding at the end the following:

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

"(A) The name and address of each importer or consignee and the name and address of the shipper to such importer or consignee, unless the importer or consignee has made a biennial certification, in accordance with procedures adopted by the Secretary of the Treasury, claiming confidential treatment of such information.

"(B) The general character of the cargo.

"(C) The number of packages and gross weight.

"(D) The name of the vessel or aircraft.

"(E) The port of loading.

"(F) The port of discharge.

"(G) The country of origin of the shipment.

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

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