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S. HRG. 104–830

TRADEMARK COUNTERFEITING

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

S. 1136

A BILL TO CONTROL AND PREVENT COMMERCIAL COUNTERFEITING, AND FOR OTHER PURPOSES

OCTOBER 10, 1995

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TRADEMARK COUNTERFEITING

TUESDAY, OCTOBER 10, 1995

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:02 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin Hatch, (chairman of the committee), presiding.

Also present: Senators Leahy, Simon, and Feinstein.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. Good morning. I am pleased to welcome you all today to discuss S. 1136, the Anticounterfeiting Consumer Protection Act of 1995. Now, this legislation is intended to respond forcefully to a rapidly growing threat to American industry and to the public, that is, trademark counterfeiting. Stated simply, it is time that we knockout the knockoff industry.

On this chart, we contacted some selected U.S. industries, and as this chart shows, the impact of these losses are substantial. Companies invest heavily in developing and maintaining their reputations, and the jobs of millions of American workers depend on the competitiveness of their employers.

Sales of pirated motion pictures, such as these right here—these are counterfeit copies of Universal Pictures' "Apollo 13" and "Waterworld." These account for 8 percent of all movie sales revenues. The pirates are so efficient that this "Apollo 13" tape was available the day after the movie's release in theaters. And this "Waterworld" tape, composed mainly of outtakes, was available before the theatrical release. That is how effective these kind of hitters really are.

The software industry is particularly affected, with sales of pirated software like this Microsoft "Windows." It is fully counterfeit, looks exactly like the Microsoft "Windows" package, and this amounts to more than 40 percent of the industry's total legitimate revenues. Now, some analysts suggest that the sale of pirated software amounts to more than the industry's total profits, the whole software industry of this country's total profits.

Perhaps most troubling, however, is the widespread threat counterfeiting poses to public health and safety. Automobile parts, like this counterfeit GM disc brake—it looks pretty good in your hands, but it is a counterfeit. These are commonly made of substandard material; they pose serious risks to consumers. The San Francisco Chronicle reported that a counterfeit GM brake lining composed of

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wood chips was responsible for the accident that claimed the life of a mother and her child. Recent media reports on dangerous bogus airplane parts have focused attention on the range of dangers counterfeit products can cause.

Media reports on the seizures in 16 States of a counterfeit version of the popular infant formula, Similac, just like this, underscores our vulnerability. The bogus formula could kill children who may be allergic to it.

As this chart shows, "Dangerous Counterfeits," there are many problems which can be dangerous to health and safety when made by the knockoff artists rather than the legitimate manufacturers who do have an incentive to make safe and effective products. Now just look at that. "Dangerous Counterfeits," health risks: You have got beverages, birth control pills, condoms, cosmetics, foods, hair care products, hand soap, industrial chemicals, medical equipment, mouthwash, pharmaceuticals. The safety risks: We have counterfeit airplane parts, counterfeit automotive parts, children's toys, electronics, fasteners, bolts and nuts. You can imagine the havoc that could be caused by counterfeits in these areas: firearms, fire doors, helicopter parts, industrial machinery, sports equipment sunglasses. These are all dangerous counterfeits that are dangerous to the consumers in this country.

Let me show you the next chart because it shows that pharmaceuticals from Advil to Zantac have been faked, counterfeited in international markets—adding health risks to products we look to for increased health and well-being. That just gives you some of the counterfeit pharmaceuticals that are available in international markets. These are not generics. These are fake, counterfeited drugs that people buy, thinking that they are the real thing.

Unfortunately, few Americans truly appreciate the significance, scope, or consequences of these counterfeiting crimes. These crimes are perpetrated openly all over our country. Recently, committee investigators purchased a fake Cartier watch—this is it right here—and, I might add, bogus RayBan sunglasses. These are both fakes. These are openly sold on the street only one block from the Capitol itself.

Perhaps it is hard for most people to perceive the relationship between a cheap, fake watch or a handbag and public health risks, money laundering murder, and—if media reports are true—terrorism. But it is there.

Those who traffic in counterfeit goods can be ruthless members of dangerous businesses, and organized crime is increasingly involved. The leader of the Born to Kill crime gang in New York City made an estimated $13 million a year selling fake Cartier and Rolex watches. This revenue stream was probably useful in financing other nefarious businesses, as well as being profitable in itself.

Additionally, the contraband itself can be used to smuggle other contraband. These handbags—this is a counterfeit handbag, and here is another one—these were recently seized being smuggled into this country with the linings stuffed full of cocaine. As you can see, they can just fill it with cocaine. Counterfeits can also provide an easy way for the profits of drug trafficking and other illegal businesses to be laundered because of the difference in price between the knockoffs and the real articles they purport to be.

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For the criminal, the lure of counterfeiting is not just the billions of dollars in illegal profit. It is the fact that the risk of being caught, prosecuted, and imprisoned is not high.

The time has come to make sure that the law provides the tools necessary to fight today's sophisticated counterfeiters, and our bill, S. 1136, will do just that. It is called the Anticounterfeiting Consumer Protection Act of 1995, but I like to call it the "knock out the knockoffs" bill.

No. 1, it increases criminal penalties by making trafficking in counterfeit goods or services a RICO offense, thereby providing for increased jail time, criminal fines, and asset forfeiture.

No. 2, our bill allows for greater involvement by all Federal law enforcement in fighting counterfeiting, including enhanced authority to seize counterfeit goods and the tools of the counterfeiter's trade, and it helps those charged with enforcing the law get the information they need to act swiftly and effectively.

No. 3, it makes it more difficult for these goods to reenter the stream of commerce once they have been seized.

No. 4, our bill adds teeth to the existing statutes by providing further civil remedies, including civil fines pegged to the value of genuine goods and statutory damages of up to $1 million per mark.

The time has come for us to send the message to the public that counterfeiting is a serious crime that involves domestic and international organized crime rings. It is a crime that robs all Americans. It is time to knockout the knockoffs.

I am pleased to welcome a distinguished panel of witnesses from law enforcement and industry to the committee's hearing today. They each bring important perspective to our discussion. I look forward to their testimony.

Our distinguished ranking member is not here, but our next ranking member, Senator Leahy, who takes a great interest in these matters is here. So if you have any comments, Senator Leahy, we will turn to you at this time.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Thank you, Mr. Chairman. I will put most of my statement in the record. We really want to hear from the witnesses. But this is an area, as you know, that I have been concerned about for some time. You and I have worked on this issue in Congresses past and will in Congresses future. In fact, I was pleased to cosponsor the Anticounterfeiting Consumer Protection Act of 1995. I realize the trademarks and goods that are counterfeited cost our Nation's companies billions of dollars a year.

Even in Vermont, where we pride ourselves on having the lowest crime rate in the country, certainly one of the lowest violent crime rates, we have a lot of businesses that lose money to counterfeiters. Vermont maple syrup producers comply with very stringent standards so that syrup lovers around the world know they are getting the best. But they find a lot of counterfeiters that use that label just to get a free ride on the reputation.

Another example is our IBM facility in Essex Junction, which makes 16 and 64 megabyte memory chips, known as DRAM's, or dynamic random access memory chips. These memory chips—and

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I might say, Mr. Chairman, it doesn't cost that much to make the chip, but it costs hundreds of millions, sometimes billions of dollars, to get to the step where you can make the first one because of all the work that goes into it. They end up being bootlegged, and IBM has estimated their annual losses to bootleg computer software at $1 billion.

Obviously, if somebody held up the Federal Reserve Bank and stole $1 billion, this would be considered certainly the crime of the decade. It would be in every newspaper headline across the Nation. But here is $1 billion stolen by pirates.

We are going to hear from Tom McGann from Burton Snowboards of Burlington, VT. This is a company that started very small. A lot of people showed some real innovative genius in building this company until now it is a world leader in making snowboard equipment, and it started from just the kind of thing, Mr. Chairman, that you and I are always saying, the genius of America is the small business that becomes a leader in the world, but loses $1 million annually to copycat boots made in Korea. These people have worked very hard in developing, through a lot of trial and error, through a lot of expenses in their developing, the best boots and then just simply have somebody who doesn't have to do any of the work in developing, any of the design work, to take them off.

Our bill expands our existing racketeering law to cover crimes involving counterfeit and copyright things, and we have to make it tougher here at home, but we can't overlook the international nature of the problem.

Copycat goods with the labels of legitimate American companies are manufactured, distributed, and sold in foreign cities around the globe, and we have to start insisting that our trading partners, if they really want to trade with us, have got to take action against intellectual property violations. It doesn't make any difference whether it is counterfeiting or copyright piracy. It is theft, it is fraud on the consuming public. And we are going to not only lose our businesses here, but we are going to lose any incentive for people to use innovative genius that makes business so great.

Counterfeiting is a serious problem. It goes to our currency. Counterfeit $100 bills have long been a subject that I believed merited action. I have even been in stores in Europe, Mr. Chairman, where they have signs saying they will not accept American $100 bills because of counterfeiting. And so I commend Secretary Rubin for the steps he took to make it better.

We know all these other things. I mean, look at counterfeit medicines. How many people who were in dire need of medication, even in our hospitals, end up with counterfeit medication. This goes even beyond the money. It affects people's lives.

So, Mr. Chairman, I am glad we are having this hearing, and I look forward to hearing from the witnesses.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY

I was pleased to sponsor the "Anticounterfeiting Consumer Protection Act of 1995," S. 1136, to provide additional tools to combat trademark and goods counterfeiting crimes that cost our nation's companies billions of dollars per year.

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Even states like Vermont, with one of the lowest violent crime rates in the nation, is home to businesses losing money to counterfeiters. Vermont Maple syrup producers comply with stringent standards so that syrup lovers around the world are not disappointed. They have to be constantly vigilant against counterfeiters who use the Vermont label to get a free ride on the reputation for excellence that syrup from my state enjoys.

Another example, concerns our IBM facility in Essex Junction, which makes 16 and 64 megabyte memory chips, known as Dynamic Random Access Memory Chips or DRAM. These memory chips are also the subject to counterfeiting activities. In addition, IBM has estimated annual losses to bootleg computer software at $1 billion.

Today, we will hear from Tom McGann of Burton Snowboards of Burlington, Vermont. This company is the world leader in making snowboard equipment, but loses an estimated $1 million annually to copycat boots made in Korea. Companies that work hard and devote resources to developing good products, ensure design and safety standards and develop a well-deserved reputation for quality deserve to have their trademarks and good names protected. Moreover, consumers need to be sure that what they are buying is what it appears to be. Burton Snowboards' testimony brings home the reality and the damage of counterfeit goods.

Our bill takes important steps to address the problem of counterfeiting in several ways. It seeks to expand our existing racketeering law to cover crimes involving counterfeiting and copyright infringement and to give our law enforcement officers additional, needed authority to seize counterfeit merchandise and impose fines on counterfeiters.

But even as we make our laws more effective in combating counterfeiting crimes here, we cannot overlook the international nature of the problem. Copycat goods with the labels of legitimate, American companies are manufactured, distributed and sold in foreign cities around the globe. We should insist that our trading partners take action against all kinds of intellectual property violations: Whether counterfeiting or copyright piracy, it amounts to theft and fraud on the consuming public. We cannot tolerate our trading partners and international allies acting as safe havens for pirates. We must take every responsible action we can to protect against piracy and counterfeiting.

Counterfeiting is a serious problem for our goods and even extends to our currency, Counterfeit $100 bills have long been a subject that I believe merited action. I commend Secretary Rubin for taking the steps he recently announced to redesign our $100 bills and look forward to the 1996 Series entering circulation.

Increasingly, we suspect that the lost revenue to legitimate U.S. companies is going into the pockets of international crime syndicates and organized criminals, who manufacture, import and distribute counterfeited goods to fund their criminal enterprises. No enterprise is safe from counterfeiters. Everything from snow boots to software to airplane parts to baby formula to medicine and medical supplies have been the subject to counterfeiting. In addition to the economic harm, the health and safety risk from some counterfeit products provides additional justification for our doing everything that we can to confront the dangers as well as the damage of illegal counterfeiting.

I look forward to hearing from our witnesses this morning and know that the Committee will want to consider this bill without delay.

The CHAIRMAN. Thank you, Senator Leahy.

At this time I would like to enter Senator Feinstein's prepared statement in the record.

[The prepared statement of Senator Feinstein follows:]

PREPARED STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

The Anticounterfeiting Consumer Protection Act is a very tough bill. I co-sponsored this legislation because I believe it represents an important step in righting an unjustified wrong. Counterfeiting is bad for our businesses and threatens the safety of our citizens.

CALIFORNIA BEARS THE BURDENS OF COUNTERFEITING

The State of California bears a greater burden than any other State when it comes to counterfeiting. In California, we have the convergence of many factors which lead to encroachment by counterfeiters: a reknowned entertainment industry,

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with some of the most creative minds in the world, a host of cutting-edge high-technology industries, and a thriving trade with the Pacific Rim.

Ironically, it is our very best attributes that attract these very bad results, results that I believe cannot be tolerated.

And Californians want to do something about it. In 1989, California became the first state to amend its Criminal Code to make product piracy a felony. But that has proven not to be enough.

U.S. FIGURES ON COUNTERFEITING

The U.S. figures on counterfeiting speak for themselves:

The International AntiCounterfeiting Coalition has estimated that counterfeiting costs U.S. industries about $200 billion per year.

The U.S. Customs Service has estimated that 750,000 jobs were lost due to foreign counterfeiting of U.S. products in 1993.

The U.S. software industry has estimated a loss of $2.2 billion per year due to piracy.

The Recording Industry Association of America estimates a $2 billion annual loss to the recording industry as a result of piracy. More than 2.5 million counterfeited or pirated audiotapes were seized in the U.S. in 1992.

The U.S. Chemical Manufacturers Association has estimated its members' piracy-related losses, for agricultural chemicals alone, at $330 million per year.

Counterfeit automotive parts, purportedly made in Detroit, cost U.S. automakers and suppliers an estimated $12 billion a year in lost revenues.

COUNTERFEIT PRODUCTS ARE UNSAFE

And, one of the most crucial and intolerable problems is that many counterfeit products are highly unsafe:

Counterfeit pharmaceuticals routinely are understrength or contain harmful additives. There is no regulatory oversight.

Counterfeit airplane parts may threaten the safety of our airlines. And the people who assemble jetliners often are unable to distinguish weak, counterfeit parts from bonafide parts.

Counterfeit automotive brake linings, made from wood chips and marketed under well-known brand names, have been responsible for fatal automobile accidents.

In the 1980s, over one million counterfeit birth control pills were marketed in the U.S. under the name of G.D. Searle & Company. Unwanted pregnancies resulted.

And those are just a few of the many examples of the dangers of counterfeiting.

S. 1136, THE ANTICOUNTERFEITING CONSUMER PROTECTION ACT

S. 1136, "The Anticounterfeiting Consumer Protection Act of 1995," provides for statutory damages, increased civil penalties, destruction of confiscated goods, and other measures that will help us fight, what has truly become, a plague in this country.

But beyond these measures, S. 1136 represents a significant departure from existing law, because it makes trafficking in counterfeit goods and services punishable under RICO, the Racketeer Influenced and Corrupt Organizations Act.

This is highly appropriate. Law enforcement officials every day are finding links between U.S.-based counterfeit operations and organized crime syndicates. Many of the criminal syndicates affecting California are based in China, Hong Kong, and Taiwan.

These syndicates are exporting counterfeiting expertise as well as counterfeit products.

And expertise it is. Counterfeiting is no longer a "mom and pop" business. These are capital-intensive, high-tech, sophisticated operations:

According to a 1994 article in the Boston Phoenix, when New York law enforcement agents raided an illicit sportswear factory in 1994, instead of finding illegal immigrants sewing labels onto sweatshirts, they discovered: A complex network of computerized embroidering and silk screen machines, with digitally-stored designer logos and insignias. The embroidering machines cost over $100,000 a piece, the silk screening machines around $25,000.

According to the Phoenix, the cost of such advanced technology is one reason that the once-independent counterfeiters have sought access to "the deep pockets of organized crime."

Other police raids have uncovered hundreds of counterfeit holograms. Holograms are three-dimensional images used on software packaging as a mark of authenticity. they are made with a highly sophisticated process using lasers.

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As criminal activity becomes more sophisticated, we have to attack these problems in more sophisticated ways. The Anticounterfeiting Consumer Protection Act represents an effort to address a very serious problem.

At the same time, I am willing to take a close look at the provisions of the bill, to make certain that it does not subject certain individuals who may be less culpable to disproportionately harsh treatment.

I look forward to hearing from the panel about their confrontations with product counterfeiting, and to further discuss the provisions of this important legislation.

The CHAIRMAN. We are fortunate to be joined by a number of expert witnesses who represent both the law enforcement side and the individual companies who suffer at the hands of illicit counterfeiters. First we are going to hear from Leonard S. Walton, who is the Deputy Assistant Commissioner for Investigations of the U.S. Customs Service. Commissioner Walton is a 24-year veteran of the Customs Service. His areas of experience include narcotics smuggling, money laundering, import fraud, technology transfer, arms smuggling, child pornography, and other law enforcement jurisdictions. We really appreciate your being with us, Mr. Walton. We look forward to hearing your testimony.

I wonder if I could get the other witnesses to take their seats as well. After Deputy Assistant Commissioner Walton, we will next hear from Mr. Dempster Leech. Mr. Leech is a private investigator and president of Harper Associates in New York City. He has dedicated the last 15 years exclusively to investigating trademark and copyright counterfeiting in one of our Nation's most prolific markets for the manufacture and sale of counterfeit goods. We are certainly pleased to have you here with us, Mr. Leech, and look forward to hearing your experiences and comments.

Following Mr. Leech, we will be pleased to hear from Mr. Thomas McGann. Mr. McGann is the senior vice president of Burton Snowboards in Burlington, VT, about whom Senator Leahy has spoken. Burton Snowboards is an industry leader in the manufacturing of equipment for this rapidly growing sport, and I might mention that Burton Snowboards are popular in my own home State of Utah where we enjoy all kinds of downhill skiing and winter sports.

Senator LEAHY. Some of it is very good, Mr. Chairman.

The CHAIRMAN. The best in the world. [Laughter.]

Senator LEAHY. For Western skiing, I suppose.

The CHAIRMAN. Listen, we have mountains out there. [Laughter.]

Senator LEAHY. For any of you who are wondering, this goes on in the cloak room, in the gym, and the dining room.

The CHAIRMAN. We also have the 2002 Olympics, too.

Senator LEAHY. And I congratulate you for that.

The CHAIRMAN. You are going to have to be there, Mr. McGann. We are proud of you and what you do and what you try to do. And I have to say that I think Vermont is one of the most beautiful States I have ever been in. I know the skiing is good there, too. It is just not powder skiing like it is in Utah. [Laughter.]

Our concluding witness will be Mr. John Bliss, president of the International Anti-Counterfeiting Coalition, Inc., the IACC. The IACC is the largest multinational organization focusing exclusively on the issues of product piracy and counterfeiting for its membership, and it has been deeply involved in anticounterfeiting efforts on both the Federal and State levels. Mr. Bliss is also former mi-

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nority chief counsel for the Constitution Subcommittee of the Senate Judiciary Committee, so we are happy to welcome you back here. Thank you for being with us, Mr. Bliss.

Mr. Walton, we will turn to you. We think you are our keynoter here, and, frankly, we really look forward to hearing from you as a true expert in this area and as one who has been in the trenches for a long, long time, somebody we all really appreciate.

PANEL CONSISTING OF LEONARD S. WALTON, DEPUTY ASSISTANT COMMISSIONER, OFFICE OF INVESTIGATIONS, U.S. CUSTOMS SERVICE; ACCOMPANIED BY ROBERT E. VAN ETTEN, SPECIAL AGENT IN CHARGE, NEW YORK, NY, USCS; DEMPSTER LEECH, PRESIDENT, HARPER ASSOCIATES, INC.; THOMAS McGANN, EXECUTIVE VICE PRESIDENT, BURTON SNOWBOARDS, BURLINGTON, VT; AND JOHN S. BLISS, PRESIDENT, THE INTERNATIONAL ANTICOUNTERFEITING COALITION

STATEMENT OF LEONARD S. WALTON

Mr. WALTON. Good morning, Mr. Chairman, and thank you for the opportunity to answer questions regarding the U.S. Customs Service's role in this particular area and Senate bill 1136. I also would like to thank you for your continuing commitment to giving us better tools to combat intellectual property fraud, and at the same time thank you for your strong support for the Customs Service's mission in general, from providing us $75 million to fight terrorism to your advocacy on our behalf with Senate appropriators on the fiscal year 1996 appropriations bill. We particularly look forward to the eventual conference on the terrorism legislation.

I would be happy to answer any questions that you may have. However, I would like to state for the record that I am not here to represent the administration's position on the bill. To my knowledge, the administration has not reviewed or yet commented on 1136, but I can certainly speak for my agency and would welcome any questions you have regarding the whole area of enforcement on the intellectual property rights area.

The CHAIRMAN. Well, thank you so much.

Mr. Leech, we will turn to you, and then we will have some questions for all of you.

STATEMENT OF DEMPSTER LEECH

Mr. LEECH. Mr. Chairman and members of the committee, thank you for inviting me today.

The CHAIRMAN. If you can pull your microphone just a little bit, right in front of your lips, that would be good.

Mr. LEECH. In late 1988, members of the New York City Police Department, the 5th precinct, informed me that the dai lo, or the "big cheese," of an Asian organized crime group known as the Born to Kill, had put out a $10,000 contract on my life and the life of an attorney I worked with. I thought that was kind of low, actually. [Laughter.]

Senator LEAHY. Insulting.

Mr. LEECH. Rather insulting, yes, considering the harm that I had done his organization. Now, I hadn't interfered with his extor-

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tion racket. I hadn't stopped his armed robberies nor the murders that his group was involved in. I hadn't cut drugs or guns that he was running. What I had done was interfere with his economic lifeblood, the counterfeiting of watches. To that end, I guess the contract from his point of view was appropriate.

Before he took on the leadership role of the Born to Kill, David Thai had worked as a waiter in a uptown hotel, and during his work as a spare-time job he was counterfeiting watches. He quickly moved up the ladder, became a distributor, and starting getting lots of money. That money he used to support a group of Vietnamese youths who had drifted into New York, a group of rather violence-prone young men. He put them in safe houses. He put them to work counterfeiting watches. And David stated publicly, as you said, Senator Hatch, that he made $13 million counterfeiting watches in 1 year. With the profits, he could afford to support the traditional pursuits of what the police call nontraditional organized crime—extortion, and armed robbery, and murder.

David is in prison now, and he will be there for the rest of his life. He was convicted of multiple counts of murder, extortion, and armed robbery. But of all the activities that Thai's gang undertook, watch counterfeiting was undoubtedly the steadiest and most profitable source of income for this group, and it created less problems for him than any of his other activities. Counterfeiting offered big cash and low risks.

The AUSA who handled David's case refused to bring counterfeiting charges against David or the other Born to Kill's who were convicted, although when David was arrested, Federal agents found a watch-counterfeiting factory in the basement of his home. The AUSA didn't want to trivialize the charges against Thai and his group.

I can understand his point of view. I look on this table, and I see dolls and games and perfume, and the public thinks of this as a kind of low-end crime, as a street game, a misdemeanor. But, believe me, it is not.

To understand why product counterfeiting is attractive to organized crime, you need to look at the profits. I have a low-quality quartz watch such as this. I can have that imported from Hong Kong for $3. I can pay somebody 50 cents to put the indicia on it, the names that make it counterfeit. And so for $3.50, I can sell this to a distributor for $8. The distributor can sell it to a retailer for $15; the retailer can sell this same watch for $25. If I were to take it out of New York City, the watch could go for $100 or more. A $3.50 investment, $100 in profit.

Another example, very quickly, on how money generated from product counterfeiting supports organized crime. In 1993, I assisted the police in raiding a large building in midtown New York that housed roughly 40 companies devoted to wholesaling counterfeit T-shirts. We took nine tractor-trailer loads of counterfeit products out of this one building and $200,000 in cash. There were 40 arrests made. Shortly after the raid, I was visited by members of New York's Joint Terrorist Task Force. They indicated to me that several of the high-level players who controlled the counterfeiting operation were using some of the money to support the activities of

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terrorism groups such as those who bombed the World Trade Center in New York.

The investigation of all this is still ongoing. Meanwhile, many of the players who were arrested are back on the street continuing to sell counterfeit shirts. Based on information I stumbled on recently, I believe the counterfeit T-shirt industry in New York generates $500 million a year, almost none of it taxed. High profits——

The CHAIRMAN. That is the T-shirt industry?

Mr. LEECH. That is right. Yes, Senator. High profits, low risk.

In point of fact, any product counterfeiting operation is highly organized crime, requiring networks of manufacturers, importers, and distributors to function. Many of these groups appear to have no other criminal preoccupations, but I often find that, on closer examination, this simply isn't true.

To sum up, the huge amounts of cash generated by counterfeiting can be used to support other criminal activities—drug smuggling, terrorism, armed robbery—making product counterfeiting highly attractive to both traditional and nontraditional organized crime groups. And criminals regard this as a low-risk venture.

We need to change that, which is why the Anticounterfeiting Protection Act of 1995 has my full support.

Thank you.

[The prepared statement of Mr. Leech follows:]

PREPARED STATEMENT OF DEMPSTER LEECH

By way of introduction, I'm a private investigator licensed in New York and New Jersey. For the past 15 years I've been investigating product counterfeiting cases, exclusively. And during that time I've worked for a wide variety of firms who have been deeply injured by trademark and copyright counterfeiting.

I will be testifying about Organized Crime's involvement in product counterfeiting. Product counterfeiting is—by defintion—a highly organized criminal activity, requiring a network of manufacturers, distributors and—often—financial backers (otherwise known as money launderers) to function. You'll be hearing other testimony regarding the amounts of money generated by counterfeiting, the lost jobs and damage to our economy, but to understand why product counterfeiting is attractive to Organized Crime, we need to look at the profits.

I can have a low quality quartz watch, similar in outward appearance to a high-priced designer watch, shipped here from Hong Kong (without the trademarks) for $3, my cost to import. I can get a worker to counterfeit the watch—that is, put on the trade names and logos, for fifty cents. Once the counterfeit marks are on this watch, I can sell it to a distributor for $8.00. More than a 200% mark-up. The distributor—retailer will sell the watch for $15 to $25 in New York City. If the distributor ships the watch out of state, he might be able to get $50 to $60 and the retailer could get $100 or more. $100 for a counterfeit watch that cost $3.50 to produce.

The profit margins rival the profits from the sale of narcotics. But as one counterfeiter carefully explained to me, the risk aren't nearly the same. And that's what Organized Crime finds so attractive about counterfeiting—high profits, low risks.

When I first started investigating product counterfeiting cases, I learned very quickly that what the police call Traditional Organized Crime (in this case, disguised as trucking companies working New York's garment district) were involved in what was an industry in its infancy—garment counterfeiting. Fifteen years ago, garment companies began sourcing their products from the Pacific Rim, and some contract manufacturers in New York, New Jersey and Pennsylvania, rocked by this development and trying to stay afloat, were seduced by the wise guys into taking extortion loans. If payoffs fell behind, the contractors were strong armed into providing other services. Making bogus garments was a natural. The money was laundered by the trucking firms—phantom deliveries, bogus invoices.

In one case, US Marshals raided a factory in New Jersey that was being used to make counterfeit garments. In addition to a lot of phony Izod LaCoste shirts, the Marshals discovered human body parts. They also found dynamite that had been

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rigged to blow up the factory. Fortunately, the man with the detonator wasn't around. He was later shot, gangland style, on the steps of the Newark Federal Courthouse.

But the wise guys couldn't compete with the flow of counterfeit goods coming from the Far East. In 1986, US Customs closed down what was then the major watch counterfeiting ring in the United States. The group, operating out of New York, had hired Vietnamese people as factory laborers, and within a few months, the streets of Chinatown were overflowing with bogus watches.

One of the players involved in this operation was an individual named David Thai. David had worked as a waiter in an uptown hotel and—in his spare time—assembled counterfeit watches in his apartment. But he quickly became a major distributor, and—as his fortunes increased—he gathered around him a group of young Vietnamese nomads. He offered them more-or-less steady employment as assemblers of counterfeit watches in safe houses located in Jersey City and Queens.

David's group, initially known as the Canal Street Boys, took on the designation "Born to Kill", and they tried to live up to the name. With a following of young, disenfranchised and violent boys behind him, David's sales approach to the street vendors didn't have to be subtle. "Buy my watches or I'll kill you."

David has stated that in his best year he sold more than $13 million in counterfeit watches. And with the profits, he could handily support his flock and turn their energies to other activities—extortion, armed robbery and murder. Now these are traditional pursuits of what the police call Non-Traditional Organized Crime Fraternities, but David had his assignments carried out with such flair that he attracted the attention of other Asian gangs. As a result—and for a period of several years—murdered bodies of heavily tattooed Asian males were turning up in Chinatown on a scale never approached before or since.

The end came when David had one of his people murder a Canal Street vendor, Sen Van Ta, in broad daylight. The man had been robbed by The Born to Kill because he had tried to point out his assailants to police.

David is now in prison. He'll be there for the rest of his life, convicted of multiple counts of murder, extortion and armed robbery. What's not clearly understood about all this is that many of these acts were committed in support of Thai's watch counterfeiting business. For example, there was an attempted armed robbery of a wholesaler in midtown New York. David and his group made the aborted try while being watched by ATF agents. What was skipped over in later testimony was that the target of the robbery was a watch wholesaler who was also a watch counterfeiter.

On November 26, 1990, Thai and his group robbed a jewelry store in Doraville, GA. During the robbery, the owner of the store, Odim Lim, was shot in the head and left for dead. My agents had investigated this store the year before; the location was alleged to be selling counterfeit watches. Our investigation was positive.

Of all the activities that Thai's gang undertook, watch counterfeiting was undoubtedly the steadiest source of income and created far less problems for Thai than his other activities. Big cash, low risk. The hallmark of trademark counterfeiting.

Vietnamese youth gangs aren't the only ethnic groups involved in counterfeiting. Only a few days ago, US Customs announced the indictments of 32 Korean importers alleged to be engaged in the importation of counterfeit handbags and garments. The Customs agents seized a reported $27 million in bogus goods. Until last year, I have believed this group had no other criminal preoccupations. But I was wrong.

In late summer of last year, with the help of the New Jersey State Police, we brought an investigation of one of this group to a close. The counterfeiter, an individual named Jae Seon Lee, was caught at a storage facility in New Jersey with approximately a container load of bogus handbags. Based on statements Lee made after his arrest, the State Police used a drug dog to search the boxes of bogus handbags. One box contained roughly a hundred handbags that were cut open between the outer material and the inner lining. The dog identified drug residue, apparently heroin, that had leaked from packets that had been inserted and sealed into the phoney bags.

Executing an additional warrant at Lee's house in Queens, police found roughly 200 more bags with the same tell-tale cuts. It appears that the bags, imported from Korea, had been loaded with narcotics in Asia and smuggled into this country disguised as * * * counterfeit handbags. Contraband disguised as contraband.

There is a strange sort of logic in this, I suppose. If the goods were inspected and detained, they would be detained as counterfeits. No major investigation would be triggered. On the other hand, if the narcotics were intercepted, there discovery would launch a major investigation and the risks would have increased. Counterfeiting: high profits, low risks.

Asians gangs are not the only organized crime groups involved in product counterfeit. In 1993 I assisted the police in raiding a large building in midtown New York

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that housed roughly 40 companies devoted to wholesaling counterfeit tee shirts. Nine tractor trailer loads of bogus shirts were removed from the building and NYPD found roughly $200,000 in cash. There were roughly 40 arrests made at this location; most of the defendants were Middle Eastern.

Shortly after this raid, I was visited by members of New York's Joint Terrorist Task Force. They indicated to me that several of the high-level players who controlled this counterfeiting operating were using some of the money to support the activities of terrorist groups such as those who bombed the World Trade Center in New York.

The investigation of all this is still ongoing. Meanwhile, many of the players who were arrested are back on the street, continuing to sell counterfeit shirts. Based on information I stumbled on recently, I believe the counterfeit tee shirt industry in New York alone generates $500 million a year in sales almost none of it taxed. Counterfeiting: high profits, low risk.

To sum up, product counterfeiting requires organization—a group of people acting a manufacturers, importers, money launderers, and distributors. As we've seen, the huge amounts of cash generated by counterfeiting can be sued to support other criminal activities—armed robbery, drug smuggling, and terrorism. All of which makes it highly attractive to both Traditional and Non-Traditional Organized Crime groups.

But what is most important is that counterfeiting is regarded by criminals as a low-risk venture. We need to change that, which is why the Anticounterfeiting Protection Act of 1995 has my full support.

The CHAIRMAN. Thank you. That is startling testimony.

Mr. McGann, we will turn to you.

STATEMENT OF THOMAS McGANN

Mr. MCGANN. Well, in the snowboard industry, I don't believe I have had any contracts put out on me yet, so it may not sound quite as exciting.

The CHAIRMAN. Don't suggest it. [Laughter.]

Mr. MCGANN. I think as Senator Leahy has pointed out, we are a small company established in Vermont in 1977, owned by one individual who was the pioneer of our sport. And our company and the reputation of our company was built on our extensive research and development, our continuing commitment to producing the best products that perform the best and the safest for our customers. Our investment in research and development far exceeds that of the industry. In fact, there have been some comments made that other people have said that "Burton's R&D is our R&D."

We tried the traditional routes of protecting our intellectual property, basically protecting what we have designed, how it is produced, and where it is produced. Unfortunately, it is not always effective. The trademark and the patent laws are really designed for people who follow the rules, who play by the rules, and the people who are knocking our products off, they don't care about the rules so they are going to find ways to do it. So that is why we need further assistance in stopping this flow of goods that comes in, and we really believe this bill will help us as an industry.

Our problem comes from the rapid turnaround of our products. They are not very intensive to reverse engineer. It may take hundreds of thousands of dollars' worth of testing and development time to produce a simple sole like this. But it would take somebody approximately 2 weeks to produce this sole, which I took out of a factory in Korea, which is an exact duplicate of our existing sole. And it cost them no money to produce this, basically, other than a $3,000 mold.

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Unfortunately, what happens is that the consumer has a hard time distinguishing between the two products, and the quality level is not controlled by us as we didn't design the product and we didn't produce this product. So it costs us a good deal of money, and really it is the frustration of trying to run a small, lean, growth business without spending a lot of administrative time chasing these things down. We want to spend our time snowboarding, one; two, designing the best products that we possibly can; and, three, listening to our customers—what do they want? And we don't want to be sitting, excuse my comment to attorneys in the room, a lot of time sitting with attorneys explaining why we are being ripped off. We want to work on our products.

The scenario follows a general pattern, and it is that an agent is hired. They go to retail shops around the globe somewhere, particularly in the United States. They purchase our products. They then take those products to foreign producers in the Far East or sometimes Europe or even Africa now, and they take these products in and they knock them off, bring them back and sell them to marketing companies as a sample. The marketing company takes orders from retailers in this country. The retailers place the order back to the agent. It is all run out of a small room with a folding table, a fax, and a cellular phone. It comes into public warehouses and is distributed before we can even interact sometimes with the Customs people to try to stop it from coming through. So it is extremely difficult to stop the infringement upon your utility and design patents and trademarks, and we just need tools to help us move in there faster.

We have had a couple of instances where people have actually produced other products such as this boot, which is pretty cheesy, that could deceive a consumer into thinking this was an appropriate snowboarding product. Now, this boot is just a cheesy hiking boot that probably would not be—would not be safe to snowboard in if somebody were to take this product. We were able to interdict this particular production in South America and reach an arrangement to stop it. But that is what we're worried about in the future. Are people bringing products like this in, misleading the consumer as to that it is an appropriate Burton snowboarding product or an appropriate snowboarding product under any brand and selling it into the retail distribution?

We also have a problem existing with soft goods, which we are an industry leader globally on soft goods, people taking our products, taking the designs, changing the logo subtly, and then shipping it into retail before we can really perform any action to stop them. So we think it is one of our threats as a company in the future, and it is forcing us to spend resources that—you know, we have got 200 people in Burlington that are manufacturing snowboards right now, and if we spend resources out trying to chase down some guy in Argentina who is knocking off a boot, that is just less resources we have to employ our people in the snowboarding business.

That is why we are very much supportive of the Anti-Counterfeiting Consumer Protection Act of 1995.

[The prepared statement of Mr. McGann follows:]

38-641 - 97 - 2

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Thomas McGann
Burton Snowboards
80 Industrial Parkway
Burlington, VT 05406
802.660.3260 (W)

SUMMARY OF QUALIFICATIONS

Burton Snowboards *1990 - 1995*

EXECUTIVE VICE PRESIDENT

RESPONSIBILITIES

RESPONSIBLE FOR THE
FOLLOWING FUNCTIONS INTERNATIONALLY:

- RESEARCH AND DEVELOPMENT
- ENGINEERING
- PRODUCT MANAGEMENT
- PRODUCT DEVELOPMENT
- MANUFACTURING
- QUALITY ASSURANCE

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The Burton Corporation is a small Vermont company owned by Jake Burton Carpenter. Since the time Burton was established in 1977, it has become the global leader in the young growth industry of snowboarding in both hardgoods and softgoods products. Burton has achieved and maintained this position of leadership as a result of its extensive investment in research and development. Burton's commitment to and investment in research and development far exceeds that of other companies in the industry. The Burton Corporation currently maintains its own operations in the United States, Canada, Japan, Europe, Australia and New Zealand. Burton products are distributed in over 30 countries worldwide.

I am here today to represent Burton in promoting the swift passage of the "Anticounterfeiting Consumer Protection Act of 1995". As a leader in the development of new technology in a young industry we are especially aware of the value of our intellectual property. We have tried to protect our intellectual property through the traditional channels of trademark and patent registration both at home and abroad. Unfortunately, these traditional routes are only a first step in effectively protecting our company against the unauthorized use of our trademarks and our patented products. In situations involving counterfeiting and copycat goods, time is of the essence. We believe that the Anticounterfeiting Consumer Protection Act of 1995 will greatly help us by reducing the time it currently takes to bring immediate and effective action against unauthorized users of our trademarks, copyrights, patents and designs

Our primary problem appears to follow a scenario where a company hires an independent agent to purchase our products. The agent then takes the products to a foreign factory where copycat or counterfeit products are produced. These products are sold to one or more marketing companies in the U.S. by the agent. In turn, the agent takes orders from U.S. retailers. The products are shipped to a public warehouse in the U.S. and from there they are shipped to retailers. Most of these companies maintain few domestic assets. As a result, our only recourse is to stop the product before it is distributed.

I can give you several recent examples of our experiences with these types of operations.

Burton is the acknowledged leader in snowboard binding technologies. With our extensive research and development, we have many utility and design patents covering our extensive line of binding products. Burton annually exhibits at an industry trade show sponsored by Ski Industries America. This year, flyers comprised of an order form for snowboard bindings and gloves were distributed at the show by an agent. (See "A", attached). The illustration of the binding they were offering for sale was an exact replica of a Burton binding that is well recognized by consumers as being a Burton product. (See "B", attached and see also patent no. 346419 attached as "C"). We immediately notified our patent lawyers who sent the customary cease and desist letter. There was no response to the letter and our lawyer decided to visit the company at its premises. By the time our lawyer arrived, however, the premises had been vacated. That is, the fax machine, folding chair and cell phone had been removed from the brownstone located at the address on the flyer. How many orders were taken and fulfilled? How many orders do they continue to take and fulfill from a new location? We have no idea.

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Through extensive research, development and testing we developed a new soft snowboarding boot sole. (See patent no. 345453 attached as "D"). A number of companies copied our design, and we were able to collect clear evidence of these infringing activities. Again, we consulted our patent lawyers who described our remedies in the courts as being so time consuming and so costly that we began to wonder why we went to the trouble of getting the patent at all. There was no immediate remedy for this type of unauthorized use available to us and no apparent value to our patent. The result was copycat products flooding the U.S. market taking advantage of our research and development investment and confusing our riders.

We believe that the next wave of problems we are facing is that counterfeit softgoods manufactured in foreign countries will find their way back to the United States for sale. We believe that our T-shirts, sweatshirts, and hats, because they are easy to produce in commercial quantity, are particularly susceptible to these types of activities. We have recently uncovered a clothing company in Argentina that has marketed a full line of inexpensive, low quality clothing that is covered with our various trademarks. We are very concerned that these goods will find there way to the United States where they may be in direct competition with our products and, even worse, where consumers will be confused as to the origin of the goods and will be led to believe that these low quality goods originate from Burton. We believe that the Anticounterfeiting Consumer Protection Act of 1995 will provide us with the means to swift and effective action to protect ourselves against these situations in the future.

In view of the above remarks, I would again like to emphasize The Burton Corporation's support of the swift passage of the Anticounterfeiting Consumer Protection Act of 1995 to support companies like Burton who are losing an ever increasing amount of revenue and technology to counterfeiters (see "E", attached). We would much rather use these monies to conduct research, to expand factories and to pay employees.

USA • Burton Snowboards
Europe • Burton Snowboards
Japan • Burton Snowboards

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Snowboards

"Put your shop logo or name here."

We have done this for years for other shops.

We don't:

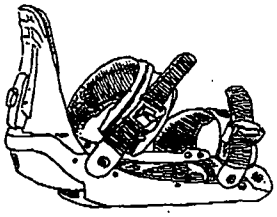
- Create an image for our boards
- Hire team riders
- Advertise in Snowboard magazines

We Do:

- Save you $75 on the cost of each board by passing along our marketing savings
- Make high quality boards in the same factories using same craftsmen and materials as other board companies
- Give you your own snowboard company
- Put your own logo on all our products

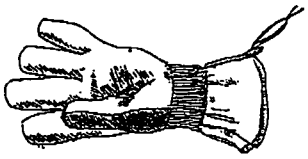
The promotion for your own boards is up to you. Spend money on a shop team you always wanted or just pass the savings to your customers. Your shop name can be printed on boots and gloves as well as t-shirts, caps and embroidered sweatshirts.

Snowboard Binding $41



Durable, safe, reliable.

GoreTex Gloves $33



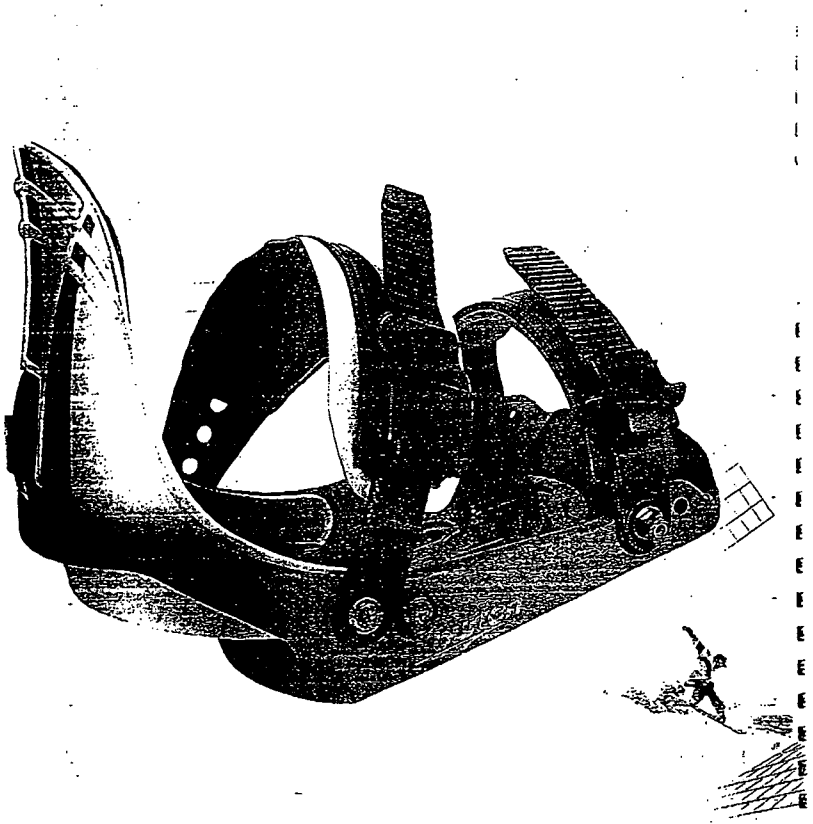
Waterproof Breathable Seam taped.
Kevlar palms with extra kevlar on finger tips.
One handed cinch and wrist wrap.
Removable fleece liner with heat pack pocket.
Glove shell is also lined for springtime use.

Also available in mitten.

Booth # 4823
On Ski side, near Ugg's and Oakley, right beside Ski Saver

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CUSTOM FREESTYLE



B

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US00D346419S

United States Patent [19]

Carpenter

[11] Patent Number: Des. 346,419

[45] Date of Patent: ** Apr. 26, 1994

Freestyle Binding

[54] SNOWBOARD HIGHBACK BINDING

[75] Inventor: Jake B. Carpenter, Manchester Center, Vt.

[73] Assignee: Burton Corporation USA, Burlington, Vt.

[**] Term: 14 Years

[21] Appl. No.: 825,729

[22] Filed: Jan. 28, 1992

[52] U.S. Cl. D21/230

[58] Field of Search 280/617, 14.2, 607; 441/70; D21/230, 229, 228

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4,979,760	12/1990	Derrah	280/14.2
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Primary Examiner—Kay H. Chin

Attorney, Agent, or Firm—Darby & Darby

[57] CLAIM

The ornamental design for a snowboard highback binding, as shown and described.

DESCRIPTION

FIG. 1 is a top perspective view of a snowboard highback binding showing my new design;

FIG. 2 is a rear perspective view thereof;

FIG. 3 is a top plan view thereof;

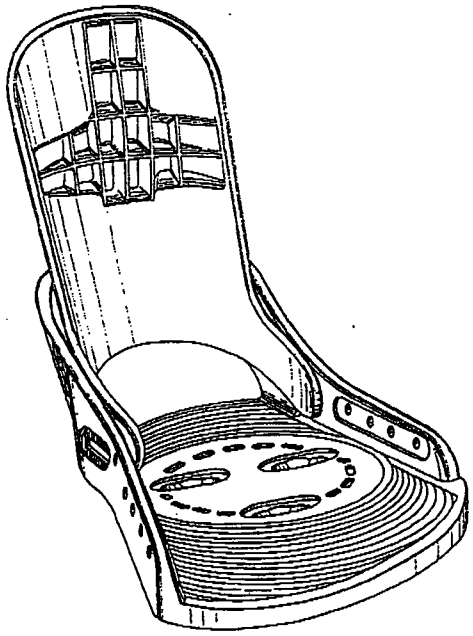
FIG. 4 is a front elevational view thereof;

FIG. 5 is a rear elevational view thereof;

FIG. 6 is a left side view thereof; and

FIG. 7 is a right side view with respect to FIG. 1.

The bottom of the device is unornamented.



C

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US00D345453S

United States Patent [19]

Carpenter

[11] Patent Number: Des. 345,453

[45] Date of Patent: ** Mar. 29, 1994

Soft Boot Sole + Last

[54] COMBINED BOOT LAST AND SOLE

[75] Inventor: Jake B. Carpenter, Manchester Center, Vt.

[73] Assignee: Burton Corporation USA, Burlington, Vt.

[**] Term: 14 Years

[21] Appl. No.: 826,952

[22] Filed: Jan. 28, 1992

[52] U.S. Cl. D2/955

[58] Field of Search ..... D2/264, 265, 274, 311, D2/317-323; 36/25 R, 28, 29, 30 R, 32 R, 43, 44, 59 R, 59 C, 83, 84, 89, 100-107, 132, 136

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D. 332,862 2/1973 Kiyosawa et al. D2/320

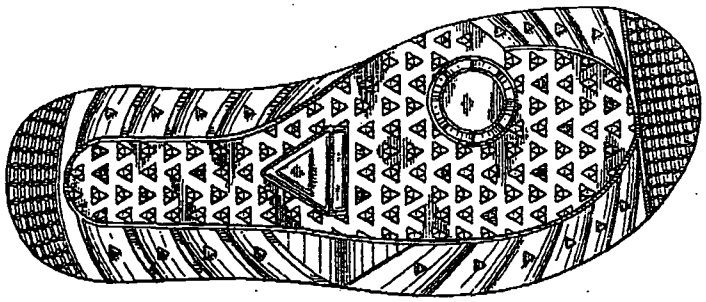
Primary Examiner—Louis S. Zarfas
Attorney, Agent, or Firm—Darby & Darby

[57] CLAIM

The ornamental design for a combined boot last and sole, as shown and described.

DESCRIPTION

FIG. 1 is a bottom plan of a combined boot last and sole showing my new design;
FIG. 2 is a right side elevational view thereof;
FIG. 3 is a left side elevational view thereof;
FIG. 4 is a front elevational view thereof; and,
FIG. 5 is a rear elevational view thereof.
The broken line showing of a boot upper in FIGS. 2-5 is for illustrative purposes only and forms no part of the claimed design.



D-1

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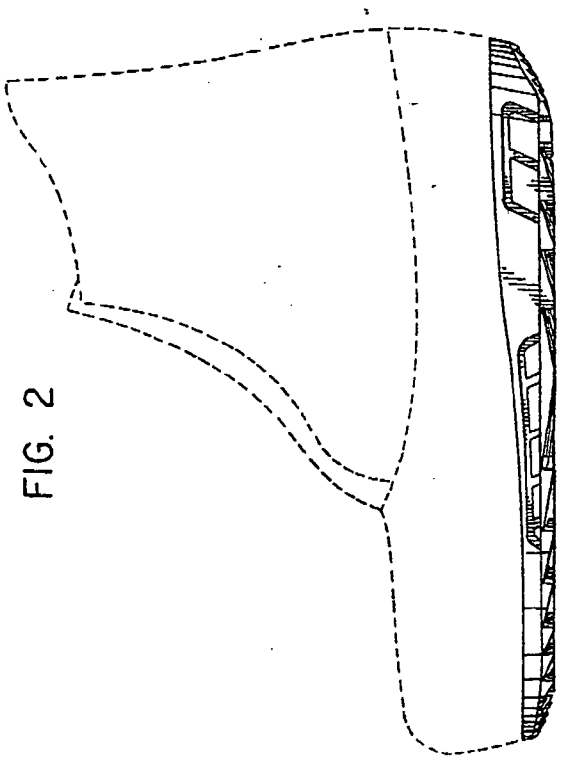
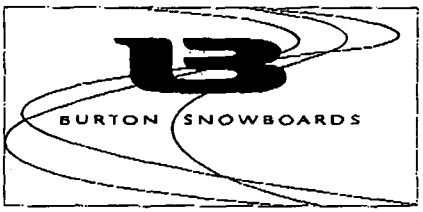


FIG. 2

D-2

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The Burton Corporation

Estimated Financial Ramifications as a Result of Counterfeiting

Fiscal Year 1996

Loss of Profit on Sales	$607,000
Registration fees for:	
Protective Patents	27,000
Protective Trademarks	63,000
Personnel Costs	246,000
Total	$943,000

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The CHAIRMAN. Thank you. We appreciate that. I can see that just one small manufacturer like yourself can be tremendously harmed by this. But, more importantly, you are pointing out that some of these things are unsafe, even though they don't seem to be and they look good on the surface. That is interesting.

Mr. Bliss, we will turn to you.

STATEMENT OF JOHN BLISS

Mr. BLISS. Mr. Chairman and members of the committee, on behalf of the International Anti-Counterfeiting Coalition, let me express my gratitude for being afforded this opportunity to testify here today. The IACC's 160 members strongly endorse the Anti-Counterfeiting Consumer Protection Act of 1995.

Mr. Chairman, 11 years ago, this committee sought to address what was then considered a growing problem for the United States: the counterfeiting of American-made goods. In 1982, this crime cost an estimated $5.5 billion. Today, the problem has become an epidemic, generating losses of over $200 billion. Current law is simply not enough. The private sector and law enforcement are outgunned, outmanned, outfunded, and almost out of time. Unless Congress acts, our country will be awash with substandard and at times lethal counterfeits.

No corporation, no product line, no area of the country escapes the counterfeiter's reach. Indeed, counterfeiters are bound by no morals, no laws. Only their ability to make a quick buck and their imagination constrains them.

For example, U.S. industry officials recently visited China to discuss that country's failure to protect our intellectual property rights. To our amazement, we found for sale 6,000 counterfeit AMC Jeeps—the whole jeep. Incidentally, the Chinese have reportedly attempted an even more brazen effort, counterfeiting a 747 airplane, which failed when the plane was unable to fly.

We must remember that counterfeits traditionally were and still are available on our city streets, in flea markets, swap meets, sports stadiums, and small boutiques. They are increasingly being found in suburbs and on the shelves of legitimate retail stores.

There are, I think, 17 States represented on the Judiciary Committee. We are aware of counterfeiting activity in virtually every one of them. As recently as 2 weeks ago, the U.S. Customs Service led massive raids in several States, including California, on factories, warehouses, and shops which were manufacturing, selling, and distributing counterfeit goods.

In addition, they executed search-and-arrest warrants for 43 Korean nationals involved in that counterfeiting operation. Counterfeit wallets, handbags, and other accessories were being assembled in California for final distribution. The entire operation affected more than 30 U.S. trademark owners.

In three recent raids conducted in Los Angeles, counterfeit Microsoft software and other material with a potential retail value in excess of $10.5 million was seized. Implicated in this activity were three Chinese triad syndicates: the Wah Chi, Big Circle Boys, and the Four Seas. The vast majority of the counterfeit product was produced in southern California. Sheriff's deputies seized counterfeit software, manuals, and holograms, but were surprised when

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they stumbled upon four pounds of plastic explosives, two pounds of TNT, shotguns, handguns, and silencers.

Counterfeiting is not a victimless economic crime. The U.S. Customs Service estimates that hundreds of thousands of American jobs every year are lost due to counterfeiting. The auto industry says that they could hire an additional 200,000 workers if auto parts counterfeiting could be eliminated.

Today, you have heard of the impact on small business with Burton Snowboards. Let me add that there is a boardwalk in New Jersey where there is only one seller of legitimate T-shirts. Fifty-two other shops who compete with this one gentleman sell low-cost fakes. This gentleman says he is under incredible pressure to give in and to earn a buck by selling the counterfeits.

Counterfeiting robs our cities and States of precious tax revenue. New York City alone loses over $350 million a year due to lost sales and excise taxes. This is obviously an enormous drain on our American economy.

Finally, let me add my observations about something that should concern us all—the sale of fakes with health and safety risks to American consumers. I have in my hand here two recent examples: counterfeit butterscotch candy and counterfeit Head and Shoulders Shampoo.

In a recent raid in Boston, counterfeit-labeled confectionery food was seized. It was illegally labeled as a product of Borden Eagle Brand, but it wasn't. This so-called almond bark butterscotch candy had been stored in unsanitary conditions, completely uncovered. The shrink wrap wasn't even on this.

Many of you have seen press reports about the Head and Shoulders episode. Ohio-based Procter and Gamble was forced to take the extraordinary but appropriate step of placing full-page advertisements in national newspapers informing the general public that counterfeited Head and Shoulders was available in retail stores and could contain bacteria and risk infection in users with weakened immune systems.

Finally, counterfeit infant formula was found in Safeway and Pack-and-Save stores in 16 States, including five States which are represented on this committee: California, Arizona, Massachusetts, Michigan, and Pennsylvania.

Obviously, when counterfeiters threaten the health and safety of even our most vulnerable, our children, we all are at risk. Passage of S. 1136 will turn the tables by providing law enforcement with the tools necessary to effectively combat this crime—a crime regarded by FBI officials as the crime of the 21st century.

Thank you.

[The prepared statement of Mr. Bliss follows:]

PREPARED TESTIMONY OF JOHN S. BLISS

Good morning. My name is John Bliss. I am President of the International AntiCounterfeiting Coalition. The IACC is a non-profit trade association comprised of more than 160 members, representing corporations, business trade associations and professional firms whose livelihoods depend on the protection of intellectual property rights. Our members are drawn from a cross section of U.S. industry—from auto, apparel, luxury goods, and pharmaceuticals, to food, computer software, entertainment, and others. Those who use the products of our manufacturing members expect these products to be safe and to be of high quality.

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On behalf of the members of the IACC, I appear here today to support S. 1136, the AntiCounterfeiting Consumer protection Act of 1995. I and all of the members of the IACC would like to begin by thanking Chairman Hatch and Senator Leahy for holding this important hearing.

Two decades ago, law enforcement officials began to see the first signs of what is now a multibillion-dollar underground illegal fake goods industry. But what started out as essentially unskilled labor working in backroom sweatshops cutting and sewing fake labels on shirts, has grown into a highly sophisticated and diversified international network of professional criminals with counterfeiting operations poised to surpass the revenues generated through drug trafficking.

Congress last dealt with the issue of strengthening federal laws against counterfeit trademarks in 1984, when the Trademark Counterfeiting Act was enacted to stem the flow of counterfeits coming into the U.S. and to stop their distribution. Regrettably, the law has failed to deter counterfeiters.

In 1982, the U.S. Trade Commission revealed that counterfeits cost the American economy $5.5 billion. Today, the IACC estimates losses due to counterfeits to be $200 billion a year, an increase of more than 3,000 percent. While the counterfeiter's profits soar, legitimate businesses are crippled. Sales of pirated motion pictures cause losses equal to 8 percent of all movie sales revenues. For example, illegal videotaped copies of the film "Waterworld," composed mainly of outtakes, were available for sale on the street even before Waterworld's theatrical release in the U.S. The film cost the studio in excess of $100 million to create, yet it could be purchased on the street for $10.00.

These and other economic losses associated with counterfeiting put Americans out of work. In 1993, Customs reported that foreign counterfeiting of U.S. products cost 750,000 American jobs. Michigan's economy is particularly hard-hit with U.S. automobile manufacturers and suppliers losing $12 billion in revenue worldwide because of the sale of fake parts. The industry claims it could hire an additional 200,000 workers if the sale of counterfeit auto parts were eliminated. Every year local communities are robbed of precious tax revenues. New York City loses over $350 million a year in sales and excise taxes—money that should go into urban development and education, but which instead snakes its way into gangster's pockets. And as you will her, counterfeiting presents not only economic harm, but a health and safety hazard as well.

Counterfeiting has witnessed untamed growth in part due to law enforcement's principal and appropriate focus on combating violent crimes. To be sure, murder and rape and other violent crimes must remain a priority for law enforcement. However, we must all appreciate that organized crime is heavily involved in counterfeiting and piracy and that counterfeiting is not a victimless economic crime.

The lure of enormous profits versus the relatively low risk of being arrested, prosecuted and incarcerated attracts international terrorist groups and organized crime rings to counterfeiting, who sell, manufacture and distribute them as a means of laundering money and funding other nefarious activities. One of the best documented examples of organized crime's involvement in product counterfeiting is the Chinese organized crime syndicates, also commonly known as triads. Once limited to operating within Hong Kong, these groups have begun to manage international operations. With the imminent PRC takeover of Hong Kong in 1997, triads are expected to further diversify and expand their operations to other countries including the U.S.

These triads use their global drug distribution networks as a means of channeling counterfeit goods and the proceeds from their sale. Their counterfeit product distribution networks in the U.S. include major warehouses and sub-distribution sites along the East Coast. There is also recent evidence that points to an increasing expansion to the West Coast. In March 1995, $400,000 worth of counterfeit Microsoft software was found during a raid in California that also turned up semiautomatic weapons, hand guns and military explosives. Newspaper stories report that those who were arrested are under investigation for their link to organized crime—a link that may reach from China, Hong Kong, and Taiwan to Southern California's immigrant neighborhoods.

One of the most notorious counterfeiters in the U.S. is convicted murderer David Thai. He is not only the former leader of the organized crime gang Born to Kill—a group that used extortion as a sales tool and prostitution as an illegal money-making scheme—he was also a successful businessman, earning up to $13 million a year counterfeiting Rolex and Cartier wristwatches. When Thai was arrested in 1991, police found a counterfeit-watch factory in the basement of his home.

And in another frightening example of organized crime's reach into product counterfeiting, the link between its drug and counterfeiting operations could not be more direct. $400,000 worth of counterfeit handbags were recently seized in New Jersey.

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During the raid, law enforcement officials using a drug sniffing dog discovered heroin had been stitched into the walls of a number of counterfeit designer Louis Vuitton handbags.

Organized crime's involvement in counterfeiting and drug trafficking, and the violence associated with these activities, is indeed alarming. Perhaps most startling, however, is the ever increasing threat counterfeits post to public health and safety.

We concur with Sen. Abraham's recent statement that auto parts are being counterfeited and putting motorists' safety at risk. In fact there is tangible evidence that directly connects some of these inferior products with fatal accidents. A General Motors investigation of an auto accident revealed that a counterfeit brake lining made of wood chips was responsible for the death of a mother and her child. Other investigations have turned up brake linings made of compressed cardboard that had an estimated lifespan of 200 miles.

In addition to safety risks, counterfeit-labeled foods and other consumer products also put public health at risk because consumers cannot be 100 percent sure of their contents. They cannot depend on the manner in which the food was prepared and preserved, nor can they depend on the product's expiration date. These counterfeits often contain unacceptable levels of mold, bacteria, and insect parts.

In a recent raid in Boston, counterfeit-labeled confectionery food was seized. Illegally labeled as a product of Borden Eagle Brand, the so-called almond bark butterscotch candy had been stored in unsanitary conditions, totally uncovered at a warehouse. And the recent widely publicized account of counterfeit-labeled infant formula found in 16 states underscores our vulnerability to unscrupulous counterfeiters who have no regard for human health and safety. Fortunately in this case the legitimate manufacturer and the FDA acted quickly to minimize the harm to children. But, shortly after the incident with the infant formula, Procter & Gamble came forward, warning consumers not to buy a counterfeit version of Head & Shoulders shampoo, asserting that it may contain bacteria and risk infection in users with weakened immune systems.

Unfortunately, current law fails to provide an effective statutory weapon against the domestic counterfeiter or the retailer who knowingly traffics in counterfeit goods. However, the IACC believes S. 1136 addresses these deficiencies by combining significant criminal penalties, enhanced civil remedies and improvements in interdiction.

Echoing the words of Chairman Hatch, "the time has come to make sure that the law provides the tools necessary to fight today's sophisticated counterfeiters." The Act gives law enforcement the added teeth to take a significant bite out of this pernicious crime.

The Anti-Counterfeiting Consumer Protection Act of 1995 stiffens federal criminal anticounterfeiting laws by making criminal copyright infringement, trafficking in counterfeit products, goods or services, or trafficking in counterfeit record, video or software labels "predicate acts" under the RICO statue. S. 1136 expands the power of law enforcement to seize the fruits, raw materials and tools of criminal counterfeiting enterprises, and provides an additional statutory basis for prosecution of counterfeiters.

In light of the active international black market in counterfeit computer software, holograms and other packaging, the Act makes it a crime to traffic in computer software labels and packaging and is a much-needed update to the statute that already protects record and video labels.

The IACC further supports the provision in S. 1136 which enhances civil remedies for counterfeiting by making it clear that any branch of federal or local law enforcement can execute an *ex parte* seizure order. This provision makes it easier for civil litigants with time-sensitive civil seizure orders to seize counterfeit goods before they vanish, despite very real manpower constraints upon various law enforcement agencies.

In addition, S. 1136 affords civil litigants the option of obtaining discretionary, judicially imposed damages in trademark counterfeiting cases. At present, a civil litigant who confronts a large-scale counterfeiter who has hidden or destroyed information about his counterfeiting activities cannot obtain money damages. The Act permits the judge, at the litigant's option, to fix a monetary award of up to $1 million in cases of willful counterfeiting, thus providing a meaningful alternative remedy.

S. 1136 makes it more difficult for counterfeit goods to re-enter the U.S. market by eliminating a current provision which is interpreted to allow pirated goods seized and found by customs to be returned to the pirate exporter.

The Act makes the destruction of seized counterfeit merchandise the rule rather than the exception, ensuring that substandard counterfeits of U.S. products are routinely destroyed, unless the trademark owner agrees to some other disposition.

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Furthermore, it allows customs to impose civil fines on importers of counterfeit goods. Currently, Customs has no civil deterrent to counterfeit importers other than seizure. By imposing civil fines tied to the fair market value of the seized goods for first-time offenders and doubling that for subsequent offenders, counterfeiters now will have a strong disincentive to import illegal counterfeit goods.

Additionally, S. 1136 permits public disclosure of aircraft manifests under the same terms as sea shipments, thus eliminating an unwarranted distinction related to information about shipping by sea and by air, and reflecting the reality that many, particularly smaller, consumer counterfeit goods and labels are routinely imported by air rather than by sea. It also requires Customs to seek information from importers about the trademarks appearing on the goods and packaging being imported, which should assist Customs in better identifying infringing goods at the borders.

And finally, S. 1136 makes counterfeit products and packaging "contraband" for purposes of allowing law enforcement to seize vehicles, vessels and aircraft used in counterfeiting operations. By allowing law enforcement to seize these instruments of counterfeiting, counterfeit products and labeling are treated the same as counterfeit currency and government securities.

Mr. Chairman and members of the Committee, the IACC believes there is little question that counterfeiting remains a large and growing problem. In the face of the spread of counterfeit products such as food, drugs, cosmetics, medical devices, emergency rescue equipment, auto and aircraft replacement parts, no manufacturer, distributor or seller of such goods should be allowed cavalierly to avoid responsibility for the authenticity of the products he or she sells. There is a clear and present danger to consumers, and a clear need for the passage of S. 1136.

On behalf of the members of the IACC, I thank you for this opportunity to address you today and would be pleased to respond to your questions.

The CHAIRMAN. Well, thank you. I think all of you have been very compelling in your testimony.

Let me start with you, Mr. Walton. Would you or any of those you have brought with you like to tell us about Operation Pipeline and comment on what you learned in those recent raids about the connection between trademark or commercial counterfeiting and organized crime.

Mr. WALTON. Thank you, Mr. Chairman. I think to respond to that question, I would like to call upon our special agent in charge from New York, who we asked to be here today, in that the New York office has the lead in what is the continuing nationwide investigation on this activity. My comment would be that your question is on point because we did learn a lot out of this particular case. There are several unique features and aspects to it, many of which I think are very consistent with comments made by the other witnesses here today. So I would call on Bob Van Etten, if I may, who is the special agent in charge from New York.

The CHAIRMAN. We would be happy to have him. Just pull a chair up, Agent Van Etten, and you can move that mike over to you.

Mr. VAN ETTEN. Mr. Chairman, Senators, thank you.

The CHAIRMAN. Give us your name and your position and what you do.

Mr. VAN ETTEN. Robert Van Etten, special agent in charge, U.S. Customs Service, Office of Investigations, New York and New Jersey.

Just a few seconds ago, you heard from Mr. Bliss about an investigation that was completed on September 27, 1995, when the U.S. attorney's office in the Newark district handed down indictments on 43 Korean nationals, authorized 21 search warrants in New York, New Jersey, Georgia, and California.

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This is the first time that U.S. Customs Service has been able to target all levels of counterfeiting. It took us to the manufacturers, the distributors, the salespersons of this counterfeit merchandise. We were able to identify 50 factories in Korea. We also were able to serve warrants on seven factories in the United States.

Senator, when we entered the premises with the warrants, we caught people actually in the act of using sophisticated, computer-driven programs that were embroidering the Guess jeans logo on jeans at 21 work stations in each of these locations.

The CHAIRMAN. Well, let me ask the two of you, and anybody else you would care to bring up, Mr. Walton, could you give us some specifics of how our legislation will help you and other law enforcement officers be more effective in cracking down on counterfeiters, smugglers, and the other criminals who perpetrate these crimes?

Mr. WALTON. Yes, Mr. Chairman, there are several aspects or provisions of this legislation that we think will be very, very valuable to us in dealing with the growing magnitude and the complexity of the problem areas of criminal jurisdiction. There have been a lot of references here today to the nature of organized crime. I think in the past many of us who have been concerned with the problem have seen the problem created by these street vendors, isolated importations, somewhat fragmented, relatively low level of criminal activity. I think it has become very apparent to everyone—and it is certainly implicit in the legislation—that we are talking about organized crime. We are talking about it from a practical as well as a legal standpoint. We are talking about a pattern of criminal investigative activity that, for us, is starting to look an awful lot like attacking the drug problem.

In that regard, we as an agency are particularly pleased to see the recommendation of the imposition of the RICO statutes simply because RICO, as was the intent of the Congress, allows law enforcement to deal with organizations as organizations, attacking them at all levels, as opposed to dealing simply with individual transactions and violations where we have to go into some sort of cumulative effect, difficult to do, very hard to investigate and prepare for prosecution.

So, from my perspective, I think the strongest positive aspect of this legislation is the allowing of law enforcement to use the RICO statutes because now we can go after them all over the place within an organization and not just deal with their commercial transactions.

There are other aspects of it as well. I am particularly, from the Customs perspective, glad to see that we will no longer have to allow the re-export of goods. In the past, shipments detected at the time of importation found to be counterfeit, the importer was allowed to simply re-export them. And, sure enough, we would have to deal with it again sooner or later in some market, either on an attempted re-entry into the United States or deal with it in a foreign market. Now, we are going to have the latitude, among other possibilities, to destroy the goods, actually destroy them. And I think that is a very, very positive thing.

Obviously, the increase in fines and penalties sends a message. There was a comment Mr. Leech made which I think was very, very true, that in the past violators have engaged in this activity

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feeling that there was very little, if any, risk to them, even if they were caught. And, quite frankly, in the past I think that has been true. Well, this legislation proposes some pretty strong sanctions and allows us to hurt them when we can catch them.

Mr. BLISS. Mr. Chairman.

The CHAIRMAN. I would be happy to have you others comment on the same question.

Mr. BLISS. On that issue of criminal RICO, I have a real-life example that should demonstrate the necessity for your provision in S. 1136. In the Microsoft case that I alluded to where they found explosives and semiautomatic weapons, TNT, silencers, et cetera, they seized over $10.5 million worth of goods, they being the L.A. County Sheriff's Office, the head of the Asian Organized Crime Division. When they presented that case to the assistant U.S. attorney in Los Angeles, he turned it down. He turned it down because he said there was no criminal copyright infringement as a predicate act under criminal RICO.

With your bill, it would be a predicate act under criminal RICO, and that assistant U.S. attorney, rather than the L.A. County Sheriff's Office, would have brought that case.

Second, another point with respect to your ex parte seizure provision, there is a provision in this bill which allows all Federal law enforcement officers to execute an ex parte seizure. The problem we have right now is that U.S. marshals alone are empowered to do that, and they lack the resources to carry out the orders around the United States.

We recently had a situation in which there was a raid in Ocean City, MD. One of our investigators went to the court to get an order to have a local law enforcement official execute the search warrant. The court denied that request on the grounds that Federal law was less than clear on whether anyone other than U.S. marshals had the authority to execute that order.

Again, with your bill, it would be quite clear that all law enforcement officers would be empowered to help us out in this battle against the counterfeiters.

The CHAIRMAN. Well, thank you. We appreciate those comments.

Mr. Leech and Mr. Bliss, as well, do you have any information or experience regarding the connection—you have alluded to that pretty directly—between counterfeiting and organized crime? And if so, could you tell us whether these ties are growing stronger or whether they are getting weaker through the years?

Mr. LEECH. Oh, yes. Well, obviously——

The CHAIRMAN. We have already heard from Mr. Walton, and, of course, he says that it does involve organized crime. You have said that it does. Give me some more.

Mr. LEECH. Well, I can only say that when I started in this business 15 years ago, although it required some organization, most counterfeiting was almost a cottage industry. I have watched it over the years grow into a multibillion dollar industry, requiring importers, money people, money launderers, distributors, wholesalers. And as this industry has grown, so has the commitment of organized crime to support it, because it is one of the most financially remunerative criminal acts that people can engage in. There is no question of that.

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Drug smuggling perhaps will make you a little more money, but the risks are so much higher right now.

The CHAIRMAN. Mr. Bliss, do you care to add to that?

Mr. BLISS. Sure. In a recent National Law Journal article, May 1995, the author said that there are at least five major international syndicates and several terrorist groups who are known to be profiting from the sale and distribution of counterfeits. It makes total sense. These corporations, these organized crime groups, operate like major sophisticated multinational corporations. They are essentially hedging their bets. They have extortion rackets, prostitution rings, gun running. These are their product lines, if you will. And if one goes sour with a major bust, they can still support their overall effort with others, including commercial product counterfeiting.

We know that counterfeiters in the organized crime area specialize. There are niche markets. In Mexico, you see auto parts; in Brazil and Argentina, you see chemicals, pharmaceuticals; in Spain, drugs, Tylenol, AIDS medicine, AZT, Advil; Russia, auto parts; Pacific Rim, toys, watches, electronic equipment; and Italy, handbags, tapes, audio tapes, videos.

It is undeniable, I think, given the experiences of our members and our investigators, that organized crime is involved, either as a manufacturer or distributor or as a funder. And it is becoming quite a useful opportunity for them to launder drug money.

The CHAIRMAN. Well, let me just ask one last question, and I will turn to my colleagues. Mr. McGann, your testimony is particularly poignant here today because you are actually a company that has really been damaged. But let me ask you this: Does the company that you represent suffer primarily from competition from cheap knockoffs or from destruction of consumer goodwill from the use of trademarks, your trademarks, or duplicate but substandard goods? Or does it suffer from both?

Mr. MCGANN. Well, the financial impact is large on a small organization like ours, but really our long-term issue is confidence in the brand. We represent research and development, quality product. We run to ISO 9000 standards. And somebody who duplicates a design without full understanding of the design process and puts it into the marketplace and deceives the consumer puts them at risk and also damages our image. And in the end, that is why people buy our products. They can depend on our research, our design, and our quality assurance. That is our major issue.

Financially, to be honest, we could live with it. It is just we are at risk in terms of people putting substandard product on the market.

The CHAIRMAN. Well, thank you.

Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman. Again, I compliment you for holding these hearings, because of our shared concern in this area.

Mr. Walton, I want to thank you and all the very hard-working enforcement agents at Treasury and Customs and the Secret Service, actually throughout your department. I have worked with many of them, as you know, on various issues we have had. I think of the people right up in my own State, because we border another

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country, Mike D'Ambrosio and the St. Albans district office. They do a great job along the United States-Canada border. Secretary Rubin and Under Secretary Noble have spent a lot of their own personal time on this, and I do appreciate that because I think that you know better than most of us just how much of a crime this is.

Mr. Chairman, without sounding too parochial on this, I use Burton Snowboards as an example because I think that you will see this replicated in a lot of other businesses, whether in sports or anything else, where you have some extremely accomplished people who come together, find a particular market, and work at making the best. This is the sort of thing that this country has always applauded, certainly in the post-war period. We have seen everything from computers to various other kinds of domestic goods, and this is an example of it.

I believe you have, what, about a couple hundred people working there in Burlington now?

Mr. MCGANN. Yes, we are closing in on 300 now.

Senator LEAHY. Closing in on 300, which in a small State of just over half a million people, that is a significant amount. But this started from nothing—it actually started from a dream.

Mr. MCGANN. It was Jake in a barn with a bandsaw.

Senator LEAHY. And I know that, and I have been there. I have visited. I have watched some of the designing. It is fascinating. Of course, my youngest son is an avid snowboarder, and he comes down with me and checks out the various new designs. But maybe you might want to tell us, Mr. McGann, about your experience at the Ski Industries America trade show and Korean counterfeiting. I found that story fascinating.

Mr. MCGANN. Yes, that was this past March. We had one of our customers bring us a flyer that basically showed, "Put your shop, logo, or name here", and it had a design of a binding drawn on the flyer, which was an exact duplicate of our design patent that we had just been awarded recently. Basically what they are trying to do is say this binding at a very low price, durable, safe, reliable, and the inference is it is identical to the Burton binding and put your logo on this binding.

Of course, we were concerned that they would produce it under substandard manufacturing conditions, all of the things that you try to avoid following good manufacturing processes. So we went to try to find these people, and we finally went to a brownstone building in south Boston, and the landlord said the person had vacated the day before. They basically had a fax set up to get to the factories in the Far East, a cellular phone, and a folding table, and that was their business: taking these orders and then just transferring to another factory, which then they would ship back to a public warehouse.

That is the type of quick turnaround that, if we had a way to act quicker other than following the design patent process, we could probably protect a lot of people from buying substandard products.

Senator LEAHY. Well, not only the substandard product, but if they are going to duplicate that, basically it is reverse engineering, as you mentioned before. They have taken a design that you might have spent a great deal of time, a great deal of money, a great deal

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of starts and stops, things that you had tried, wouldn't work, reject, try something else and so on. It is the first one you make, the first binding, the very first one that comes out, might cost tens of thousands, even hundreds of thousands of dollars in one sense.

Mr. MCGANN. Literally hundreds of thousands of dollars for one product like this.

Senator LEAHY. But they are turning that first binding out for just what the cost of the material is.

Mr. MCGANN. Right. Mold and material.

Senator LEAHY. Incidentally, I am glad we got our friends from the Customs Service to reclassify snowboard boots, which have been termed "protective footwear," which should help a lot. But do you find this is getting to more and more your cost of doing business, just tracking this down? Did you go to Korea yourself, for example?

Mr. MCGANN. Yes, I do travel extensively in the Far East, being in charge of the product development area at Burton as well, and it is so pervasive. I was flying out on a Sunday morning last November, and I am standing in line at Japan Airlines, standing in coach, just wanted to get home to see my children. And I look over and I see two Burton Snowboard boot boxes in the line next to me. What really pissed me off is the guy is in the first-class line. [Laughter.]

And I am just dressed casually in jeans, and I said, "Well, what are these?" And he said, "These are Burton boots. I brought them here to copy them." And I said, "Oh, give me your business card." And without acknowledging who I was, I took his business card, and, sure enough, he was out soliciting orders with those boots.

Now, that was a chance meeting in an airport, so we were able to communicate with him directly and enforce our design patents. But it was just like he was proud of what he was doing standing in an airport in Pusan, Korea, trying to——

The CHAIRMAN. Must be more money in counterfeiting than in doing the real——

Senator LEAHY. He didn't have to pay for the design.

Mr. MCGANN. Yes, exactly.

The CHAIRMAN. That is something.

Senator LEAHY. So he could fly first class.

The CHAIRMAN. Sure.

Mr. MCGANN. It is that pervasive on these agents just running back to a factory who are basically in the game, too.

The CHAIRMAN. Was this a U.S. citizen, too?

Mr. MCGANN. I am not sure of the citizenship. He was probably on his way to Japan to sell boots there, then on his way to the United States to sell boots there. We have had to, in Japan, put holograms on our products, particularly our snowboards that were produced in the United States, to prevent parallel importation and counterfeiting so that the consumer in the Japanese market is aware that this is an authorized Burton quality product.

Senator LEAHY. Well, I have gone through your plant on different occasions in Burlington down near what was the old GE plant, and I look at all the different tests you make—stress tests, strength tests. I mean, you would know the better words for it. But on these ripoffs, there is not that kind of a background. This becomes a

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consumer issue, too. This is not just Burton Snowboards losing money, but it is also if somebody goes in to buy Burton's or buy amphetamine or buy whatever else, they assume a certain responsibility on the part of the manufacturer. If they have a good name, they stand behind the product. But it is a case where the consumers themselves can be injured.

Mr. MCGANN. Yes, that is one of the primary concerns. They do not follow—there are no standards in our industry. There is no book on how to make a snowboard. We generally write the book every year. We do work with industry coalitions, particularly the International Standards Organization, to develop some strength and testing standards so that the industry can be assured that safe products are being produced. The person who is doing a knockoff could care less about that, and so they will just produce the product with virtually no field or laboratory testing and ship it out. It is a risk, and particularly compatibility among components. There is the binding. Does it work with the boot? Does it work with the board?

Senator LEAHY. Well, Mr. Chairman, I think that is an important issue. Here it is this. My wife is a nurse in a medical-surgical floor, and they bring medications up, some of which are vital to—not just to the health, but actually to keep somebody alive throughout the night or the day, and a counterfeit pharmaceutical looks to somebody who doesn't have the whole lab right there—and that is whoever is dispensing it—looks exactly the same as the noncounterfeit. I mean, there are major dangers, not just to the manufacturers who lose money but to the consumers.

The CHAIRMAN. I think that is a good point.

Senator Feinstein, we will turn to you.

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I want to thank you for the work done that you did on this bill. I think it is a very significant bill. It is also a very tough bill.

The CHAIRMAN. Yes, it is.

Senator FEINSTEIN. And I am very pleased to be a cosponsor of the bill.

Mr. Walton, I would like to begin, if I might, with you and ask you a couple questions. The bill we are discussing today calls for the imposition of civil fines at the discretion of the Customs official. In which instances do you think you would impose such a fine? And when would you be less inclined to do so? Do you believe that leaving this penalty to the discretion of the Customs Service promotes or undermines the fairness? Does that mean that certain international counterfeiters will receive hefty fines at the border and others will not?

Mr. WALTON. Senator, the only way I probably could answer your question at this juncture is to say that probably, the implementing provisions of this will be structured in a manner that we have applied in the past with regard to escalating degrees of culpability under the law, that there will be definitions applied that will, again, uniquely case by case determine whether the importation or the violation resulting from the importation was a matter of negligence, all the way up through some definition of willful or intent. I mean, that is basically the way we have done it in the past. It is not, strictly speaking, my area but I think that is what you

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would see here, is the evolution of provisions that would take into account case by case the degree of intent, the degree of knowledge, care taken on the part of the importer and so forth.

As you know, there is another provision of this legislation that deals in the entry process with importer knowledge. We in investigations felt very, very strongly that that should be in there. Now an importer at the time of importation is going to have to acknowledge the question of possible IPR trademark or other aspects to that importation by checking the box, answering the question. That for us could constitute a very important knowledge element when we investigate these matters.

What has happened in the past, I think, all too frequently is that the whole problem has been defined in such small, narrow terms that there has been an attitude of, oh, yeah, I didn't know about that, or something to the effect of, oh, yeah, but that is very, very rare that that happens. I think this legislation very adequately addresses the magnitude of the problem in forcing the entire importing community of a certain responsibility.

So taken together, I think this could be very effective in bringing down some pretty heavy hits on this stuff.

Senator FEINSTEIN. Well, I gather what you are saying is that this allows you the flexibility to really be able to aim the toughest penalties for the large, sophisticated counterfeiters.

Mr. WALTON. Yes.

Senator FEINSTEIN. I remember not too long ago my husband was in Hong Kong. He brought back as gifts $6 Members Only jackets. Well, it turned out they were counterfeits, and you just peeled off the label. It was sold—it had another—it had For Members Only. You peeled off the label, and it had For Members Only underneath it. So it was sold under another brand name, but you peeled off the brand name, and you had For Members Only, so you bought what was a $150 jacket for $6 in Hong Kong. Now, this had to be part of a huge shipment. So I take it you could take things like that into consideration.

Could you also elaborate on the current practice of re-exporting counterfeited goods? I understand that we currently send confiscated goods back to their countries of origin, and I am curious. Are these goods sent to foreign governments or to organizations that ship the products? And how and why did this policy originate? Because it seems to me that what you would want to do is take counterfeited goods out of circulation, not return them for possible recirculation.

Mr. WALTON. Senator, I have been a special agent in the U.S. Customs Service for 25 years, and I don't know where the practice originated. It went back before my time. And you will find this practice of allowing re-exportation to occur in other classes of goods as well. And I think what it speaks to is a perception that may have existed starting quite a long time in the past that these types of violations were nuisance violations, that they weren't serious, that they were the result of oversight, if there was any problem or error at all.

Basically, to answer your question, it is my understanding that the detection of goods subject to prohibited importation—that is,

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where they will not be allowed—are allowed re-export by the importer.

Senator FEINSTEIN. How much is re-exported a year by Customs?

Mr. WALTON. That I would have to look into. I am not sure how much of that we do. Understand, Senator, that——

Senator FEINSTEIN. Would you be willing to obtain that figure for me?

Mr. WALTON. Certainly.

Senator FEINSTEIN. And could I get a breakdown of exactly what is involved in this?

Mr. WALTON. Yes.

Senator FEINSTEIN. Because it seems amazing to me that they re-export.

Mr. WALTON. Well, as I indicated, Senator, this isn't the only place where we have done that. And even within Customs, I can tell you this has been a matter of some debate. Obviously, in investigations, we feel very, very strongly, to what is sometimes considered the harsher side of punitive action, and then we have an importing community and a trade community that has a voice in it, too. This has not been an easy discussion, even internally. That is why, quite frankly, I am so glad to see this here because it very specifically stops that practice.

We have, by the way, stopped that practice with regard to other classes of goods where we have analogous problems, but this specifically deals with it here.

To answer your question, I will do everything I can to determine that and provide that information to your office.

Senator FEINSTEIN. Thank you. And I wanted to ask a question. One of the things, Mr. Chairman, that my office has been looking into, and particularly from the California perspective, is the huge development of Asian gangs in this country that actually cross State lines. A recent study was just put out. In Los Angeles, 43 percent of the homicides are attributable to gangs in 1994. Forty-three percent of the homicides. And I was interested in Mr. Bliss' comment on gang participation in counterfeiting. How big is it? How wide is it? How interstate is it?

Mr. BLISS. Well, from what we are able to tell, it is big and it is wide. It is bicoastal. There has been an ongoing operation involving one of my members with Korean organized crime gangs where the genesis of the operation is the manufacturer of a product in Korea. It is shipped to the east coast, and it is trucked across to the west coast.

In the Microsoft raid that I was alluding to earlier in Los Angeles, the sheriff there has said in his testimony, which I think has been submitted to the committee, that that was bicoastal in nature.

I think Dempster Leech might be able to respond as to other particular instances that he has been involved in where there has been some extensive bicoastal activity as well.

Senator FEINSTEIN. I would appreciate it.

Mr. LEECH. Yes. Most Asian gangs can be found in most highly populated cities in the United States, branches of them, divisions of them. And most of those gangs have specific jobs to do, and many of those jobs involve the distribution of counterfeit products.

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The Born to Kill, for example, are still active in New York, in Los Angeles, in Boston, and Dallas. Investigations that I have conducted involving, as a matter of fact, those handbags that Senator Hatch showed that were filled with narcotics, those goods came in on the west coast, were shipped to the east coast, and they were also—the same shipments or parts of those shipments wound up in Houston. So it gives you an idea of where all this is going.

People I have investigated in New York have wound up being investigated by other of my associates in Las Vegas, Los Angeles, Chicago, Denver, and Atlanta. So it is a very nomadic kind of activity. Groups wind up in Virginia bombing residences and they wind up in New York selling counterfeit handbags.

Mr. BLISS. Senator, if I could add one point on that, what is probably even more disturbing than the rise of organized gangs is that they are working together. Gangs who otherwise would be at each other's throats, literally killing each other over territorial disputes, are putting those differences aside to work collectively to share their relative expertise in either distribution or in trucking or in manufacturing to bring these products to market and to make a buck for all of them.

Senator FEINSTEIN. Just one last comment if I might, because we are also marking——

The CHAIRMAN. Well, Mr. Walton had a comment.

Senator FEINSTEIN. Oh, I am sorry, Mr. Walton.

Mr. WALTON. Senator, I just wanted to add something to that. There is another aspect of this very closely related to the matter of gangs and all the rest of it, and that is that there is, to some degree, a tie to the employment of undocumented aliens in this country. In just one of the sites in New York during Operation Pipeline, at the time of the raid we found 77 undocumented aliens working at that facility. So if you extrapolate that nationwide to a lot of this, you know—that was in Los Angeles, I am sorry, not in New York. In Los Angeles, there were 77 undocumented aliens working at just one of the raid sites when we executed our raid. So, obviously, with that number, there has got to be some impact on a national scale.

Senator FEINSTEIN. Just one last point, because many of these gang members are coming in, not all of them illegally, some of them reportedly under L–1 visas. And if you have any information on that, Asian gangs or any gang member coming into this country—it could be Russian mafia, for that matter—actually using our immigration system to be able to get in, we are in the process of marking up an immigration bill and that could be very, very useful. I would certainly appreciate any of that information.

Thank you.

The CHAIRMAN. Well, thank you. I want to just say how much we have appreciated the testimony here today. This is an important bill. People don't realize how important it is. I want to compliment you folks at Customs. You do a terrific job under overwhelmingly difficult circumstances without much publicity or fanfare or credit. And some of us really understand what you do; we really appreciate your protecting our kids and our families and their lives. This really does involve consumer problems. We are talking about the health and safety of consumers. We are talking

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about organized crime here. We are talking about industries that are clandestine throughout this country, that are ripping our society apart, that are, as you said, Mr. Leech, and you have said, Mr. Walton and Mr. Bliss, make a lot of money, make a lot of money by stealing ideas and by corrupting products that in many cases are very dangerous. But even if they are not, the money is used for organized criminal purposes that really amounts to destruction of our society.

So this bill I consider one of the most important bills in this Congress. It is a small, little bill, but it will have a dramatic, huge impact. And we are really grateful for the testimony of each and every one of you. Mr. Leech, we are grateful for the courage you have had to do the work that you have done through the years. Mr. McGann, we empathize with you and we understand that it is terrible that you work as hard as you do and spend as much money as you do and provide the quality products you do only to have them ripped off by people who aren't as good. And, Mr. Bliss, we miss you up here on the Judiciary Committee, but we can see you are doing great work off the committee, and we appreciate what you are doing.

What we are going to do is keep the record open for comments from anybody who cares to submit them to the committee, other experts in the field, and for questions from any of our members of the committee. We will keep it open for a limited period of time so those of you who want to get more information to us, especially any of you here today, especially Customs, we would be happy to have this record built even stronger. And for those outside the Senate, we would be happy to have anything you would care to add as well.

We think this has been a good hearing. We are going to push this bill. I think we will get it through this year. At least we intend to, and it will do an awful lot to help save this country and do what is right and get tough against these vicious criminals that are using these clandestine funds to destroy our society.

So thanks for coming. You have played a very significant role in this bill, and we will be pushing it from this day on. Thanks so much.

With that, we will recess until further notice.

[Whereupon, at 11:14 a.m., the committee was adjourned.]

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APPENDIX

PROPOSED LEGISLATION II

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.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

The counterfeiting of trademarked and copyrighted merchandise—

(1) has been connected with organized crime;

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(2) deprives legitimate trademark and copyright owners of substantial revenues and consumer goodwill;

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

(4) eliminates American jobs; and

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

SEC. 3. 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. 4. APPLICATION TO COMPUTER PROGRAMS, COMPUTER PROGRAM DOCUMENTATION, OR PACKAGING.

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

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(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

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

SEC. 5. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.

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

"(e) Beginning with the first year after the date of 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 traffick-

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ing 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;

"(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 of title 18.".

SEC. 6. SEIZURE OF COUNTERFEIT GOODS.

Section 34(d)(9) of the Act of July 5, 1946 (60 Stat. 427, chapter 540; 15 U.S.C. 1116(d)(9)), is amended by striking the first sentence and inserting the following: "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 Post Office) 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. 7. RECOVERY FOR VIOLATION OF RIGHTS.

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

"(c) In a case involving the use of a counterfeit mark (as defined in section 34(d) (15 U.S.C. 1116(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. DISPOSITION OF MERCHANDISE BEARING AMERICAN TRADEMARK.

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

(1) in the second sentence, by inserting "destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may" after "shall, after forfeiture,";

(2) by inserting "or" at the end of paragraph (2);

(3) by striking ", or" at the end of paragraph (3) and inserting a period; and

(4) by striking paragraph (4).

SEC. 10. CIVIL PENALTIES.

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

"(f)(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 (e) 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

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retail price, determined under regulations promulgated by the Secretary.

"(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, as determined under regulations promulgated by the Secretary.

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

SEC. 11. PUBLIC DISCLOSURE OF AIRCRAFT MANIFESTS.

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

(1) in the matter preceding subparagraph (A), by inserting "vessel or aircraft" before "manifest";

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

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

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

"(E) The seaport or airport of loading."; and

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

"(F) The seaport or airport of discharge.".

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SEC. 12. CUSTOMS ENTRY DOCUMENTATION.

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

(1) by striking "Entries" and inserting "(1) Entries"; and

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

"(2) The Secretary, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of section 42 of the Act of July 5, 1946 (60 Stat. 440, chapter 540; 15 U.S.C. 1124) or any other applicable law, including a trademark appearing on the goods or packaging.".

SEC. 13. UNLAWFUL USE OF VESSELS, VEHICLES, AND AIRCRAFT IN AID OF COMMERCIAL COUNTERFEITING.

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

(1) by striking "or" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting "; or"; and

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

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"(6)(A) A counterfeit label for a phonorecord, computer program or computer program documentation or packaging or copy of a motion picture or other audiovisual work (as defined in section 2318 of title 18);

"(B) a phonorecord or copy in violation of section 2319 of title 18; or

"(C) any good bearing a counterfeit mark (as defined in section 2320 of title 18).".

SEC. 14. REGULATIONS.

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

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ADDITIONAL SUBMISSIONS TO THE RECORD

PREPARED STATEMENT OF THE INTERNATIONAL TRADEMARK ASSOCIATION

Mr. Chairman, the International Trademark Association (INTA) (formerly known as the United States Trademark Association), appreciates and welcomes the opportunity to submit a statement in support of S. 1136, "The Anti-Counterfeiting Consumer Protection Act of 1995." INTA believes strongly that this legislation represents a step forward in insuring that owners of trademarks and the public are protected from the dangers associated with counterfeit goods.

INTA is a 117-year-old not-for-profit membership organization. Since the founding in 1878, its membership has grown from twelve New York based manufacturers to approximately 3,000 members that are drawn from across the United States, and from 110 countries.

Membership in INTA is open to trademark owners and to those who serve trademark owners. Its members are corporations, advertising agencies, professional and trade associations, and law firms. INTA's membership crosses all industry lines, spanning a broad range of manufacturing, retail and service operations. Members include both small and large businesses and all sizes of general practice and intellectual property law firms. Equally important, INTA's members are both plaintiffs and defendants in disputes involving trademark rights. What this diverse group has in common is a shared interest in trademarks, and a recognition of the importance of trademarks to their owners and to consumers.

THE ANTI-COUNTERFEITING CONSUMER PROTECTION ACT OF 1995

History

Since the Lanham Act was passed in 1946, counterfeiting has grown tremendously. This growth reflects consumers' increased desire for brand name products, the ability of counterfeiters to adapt to trends in the public's appetite, and the enormous profits that can be made from the sale of counterfeit goods. The inability to deter counterfeiters effectively has enabled them to develop an intricate network of manufacturing and distribution.

The Trademark Counterfeiting Act of 1984 was a move in the right direction in an attempt to stem the manufacture, importation, and distribution of counterfeit goods in the United States. The Act represented Congress' efforts to protect American businesses and the consumers who buy their products against counterfeiting. Federal prosecutors and trademark owners now have at their disposal both civil and criminal remedies that make enforcement against infringement more effective.

Changes in the law as a result of the Anticounterfeiting Act of 1984:

The Act created Sec. 2320 of the U.S. Criminal Code, which imposes severe penalties for international trafficking in counterfeit goods and services.

The Act amended Sec. 34 of the Lanham Act to provide for ex parte seizures. The Act allows trademark owners bringing a civil suit to obtain a court order to seize counterfeit goods and related business records without notice to defendant.

The Act amended the Lanham Act to provide enhanced civil penalties for trademark counterfeiting. A successful plaintiff in an action for counterfeiting ordinarily is entitled to recover treble damages and court costs.

INTA supported the introduction of the Anticounterfeiting Act of 1984 and applauded its eventual passage. As a result of the provisions contained in the Act, trademark owners have greater protection against unlicensed uses and the public has greater assurance that the goods they buy are genuine.

Problems of today

Unfortunately, the Anticounterfeiting Act of 1984 has been unable to completely stem the tide of counterfeit goods moving into and within the United States. In 1988, the International Trade Commission estimated that, at a minimum, U.S. companies alone were still losing at least $60 billion worth of sales worldwide from counterfeiting. More recent estimates place the number as high as $200 billion. In addition, countless American jobs are lost as a result of counterfeit goods.

The impact of counterfeit goods on trademark owners is overwhelming. A trademark serves to distinguish one's business products from all the others used in commerce and represents an investment in both dollars and time. To the consumer, a trademark symbolizes quality and characterizes confidence in the product.

For many companies, their trademark is their most valuable asset. In a 1994 study published in Financial World, for example, the "Coca-Cola" mark was valued

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at $35.9 billion; the "Kodak" mark at $10 billion; and the "Microsoft" mark at $9.8 billion. These numbers demonstrate the major importance of trademarks to a healthy and growing economy.

Counterfeiting, on the other hand, has a devastating impact on our economy. Lost sales revenues, jobs, taxes, and customs duties, along with the significant cost of enforcement against counterfeiting, contribute to an exponential increase in the losses sustained by the U.S. economy.

Counterfeit goods also have the ability to destroy the reputation and good will associated with the marks of legitimate owners. Gradually the public begins to lose confidence and respect for reputable companies due to the appearance of counterfeits in the marketplace. More often than not, these goods are poorly constructed and are unable to perform the functions for which they were designed. They can even pose a risk to consumers' health and safety.

Mr. Chairman, in the past you have cited several instances where counterfeit goods have caused loss of life and/or injury. In your statement of August 9, 1995, you mentioned a very tragic case where a mother and child died as a result of a counterfeit General Motors brake lining composed of wood chips. This is but one disturbing incident out of many that are cause for profound concern.

A second example, metallic fasteners connect mechanical parts in automobiles, armored tanks, aircraft, the space shuttle, and industrial equipment such as above ground oil tanks. Counterfeit fasteners made in the United States and overseas continue to cause serious accidents involving vehicles and machinery. The "Fastener Quality Act of 1990" (P.L. 101–592) was intended to curb the production, sale, and importation of defective counterfeit fasteners by imposing civil and criminal penalties on those who dealt illegally in these materials. Manufacturers are also required under the law to register with the government a particular designation or mark for use on its product as a means to identify the company responsible for the manufacture of defective parts. Unfortunately, the law has never been implemented and the number of injuries continue to grow.

A final example of the physical harm caused by counterfeit goods is the on-going investigation by the Food and Drug Administration (FDA) into the sale and distribution of counterfeit baby formula, as reported by the New York Times on September 6, 1995. In February, 1995 officials seized 45,000 pounds of counterfeit baby formula in the State of California. The probe has since expanded into eight states and continues to uncover potential health threats. As a result of imitation baby formula, FDA investigators believe some infants may suffer allergic reactions, or become severely malnourished. When counterfeiting effects our children, truly the most innocent of consumers, we must redouble our efforts to ensure their safety.

Provisions contained in S. 1136

The proposed amendments contained in S. 1136 will strengthen the power of law enforcement officers in order to enable them to put a stop to counterfeiting schemes. For example, the bill clarifies that, in addition to U.S. Marshals and state and local law enforcement officers, any federal law enforcement officer (including agents from the Federal Bureau of Investigation, Secret Service, and Customs Service) may accompany civil plaintiffs in the *ex parte* seizure of counterfeit trademarked goods. This provision will allow for swifter execution of *ex parte* seizure orders issued by the court, since civil plaintiffs will have more of the federal government's resources at their disposal.

S. 1136 would also increase the power of federal law enforcement in another vital area. The bill makes trafficking in counterfeit goods and services "predicate acts" for purpose of the Racketeer Influenced and Corrupt Organization Act (RICO). As a result, counterfeiters will pay greater fines and spend more time in jail—the greatest deterrent against future acts of counterfeiting. Counterfeiters will have less opportunity and less capital in which to start another criminal enterprise. In addition, federal law enforcement will be permitted to seize non-monetary assets of the counterfeiters which allow them to practice their nefarious activities. In short Mr. Chairman, this provision will help put many trademark counterfeiters out of business permanently.

To help curb the introduction of imported counterfeit goods, the bill appropriately states that the Secretary of the Treasury shall require such information on entry documentation as to allow for a determination regarding whether the imported merchandise bears a counterfeit trademark. The bill also eliminates the current provision in Customs law allowing the re-export of seized goods. Agents of the Custom Service would be required to destroy the merchandise, thereby preventing further economic injury to U.S. companies and physical detriment to the consumer. Both provisions recognize that the ills of counterfeiting extend far beyond the borders of the United States.

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In trademark counterfeiting cases, as in all other cases, the plaintiff has the burden of proving damages. Most often, the defendant is difficult to locate and has retained few, if any, business records. As a result, proof of damages is difficult, if not impossible. These so-called "fly-by-night" operations are often mobile, with no permanent base, and utilize cheap equipment to make their products. Counterfeiters continue their enterprise because it is relatively inexpensive for them to do so, and very lucrative given their lack of overhead and marketing expenses, and in most cases, non-payment of taxes.

While the counterfeiters get richer and richer, U.S. companies are losing billions of dollars as a result of counterfeiting. To help businesses recover their losses, S. 1136 incorporates additional civil penalties. The bill states that trademark owners could opt for an award of statutory damages of up to $1,000,000 per mark. Not only do these increased civil penalties help trademark owners recover from financial damage, but they also help to put a dent in the pocketbooks of counterfeiters who may contemplate setting up shop again in the future.

Finally, S. 1136 requires that the U.S. Attorney General obtain current information concerning counterfeiting cases from U.S. Attorney's offices throughout the United States. The Attorney General would then be required to include this information in the yearly report submitted to Congress by the Department of Justice. This provision will insure that Congress is aware of the level of effort being undertaken by the Justice Department to thwart trademark counterfeiters around the nation.

Each one of these provisions Mr. Chairman, demonstrates the willingness of Congress to take counterfeiting seriously and to direct more resources to fighting this chronic problem.

Conclusion

INTA believes that the "Anti-Counterfeiting Consumer Protection Act of 1995", is consistent with this Committee's efforts to stamp out crime in whatever form it assures. This legislation not only addresses the physical well-being of our citizens, but the health of our economy.

INTA urges the Committee to report out S. 1136 as promptly as possible and looks forward to working with the members of the panel and its staff in assuring passage of the measure.

PREPARED TESTIMONY OF LOS ANGELES COUNTY SHERIFF'S SERGEANT THOMAS BUDDS ON THE ANTI-COUNTERFEITING CONSUMER PROTECTION ACT OF 1995

WITNESS' BACKGROUND

Sergeant Thomas Budds has been a member of the Los Angeles County Sheriff's Department for twenty-six years. The majority of his career has been as a detective, primarily investigating homicides and Asian organized crime. He is currently the first-line supervisor of the Asian Organized Crime Unit for the Los Angeles County Sheriff's Department.

Sergeant Budds is the recipient of the Los Angeles County Sheriff Department's Meritorious Service Medal and in 1979 was recognized as one of the top ten police officers in the United States by the International Association of Chiefs of Police. Sergeant Budds holds a masters degree from the University of Southern California.

OVERVIEW

The counterfeiting of intellectual and trademark properties is a significant aspect of diversification synonymous with Asian organized crime. Asian organized crime groups operate in the criminal arena with organizational paradigms patterned after legitimate and successful international corporations. However, criminal enterprises operate without red tape, regard for international boundaries, or payment of taxes. The scope of the problem is reflected in the way Asian criminal groups work. In order to conduct a successful criminal enterprise, totally different Asian groups, who normally do not get along, lay down differences and operate together. This means the group actually making the counterfeit product may employ another group that has an existing transportation network and yet another group for distribution.

I wholeheartedly agree with the observation as stated by Chairman Hatch, "The problem is more than economic". Critical data bases can be destroyed and/or "secure" data bases can be compromised as a result of viruses unaccounted for within counterfeit software. Further, Asian criminal enterprises use proceeds from counterfeiting to finance the purchase, transportation, and distribution of illicit narcotics and the financing of international illegal alien smuggling, encompassing modern-day

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slavery operations. These are but some of the hidden outgrowths and use of counterfeiting proceeds.

Asian criminal groups are diversified, in that, they conduct several illegal operations simultaneously. This ensures the welfare of the group as a whole, in the event any portion of the specific illegal enterprise is arrested by law enforcement. Other areas of their criminal diversification are found in their commission of extortions, credit card fraud, gambling, prostitution, the counterfeiting of "Levis Strauss", and many other trademark properties. It is "more than economic" for all the attendant reasons associated with the aforedescribed crimes and the social fallout resulting therefrom. It should also be remembered that all the above is enforced though the employment of maniacal violence by members of these groups.

The Anticounterfeiting legislation proposed in the form of the "Anti-Counterfeiting Consumer Protection Act of 1995" should be viewed as a major step forward in the fight against organized crime. It should be viewed circumspectly in its relationship to how counterfeiting develops financial resources used to support and enhance other illegitimate activities and the associated violence.

COUNTERFEIT "MICROSOFT" INVESTIGATIONS

An eighteen month investigation into the counterfeiting of Microsoft software, headed by detective Jess Bembry under my supervision, is ongoing. Our investigation has identified, thus far, three Asian organized crime groups with international ties involved in our cases. The groups are the "Wah Ching", "The Big Circle Boys", and the "Four Seas". In our case, the vast majority of the counterfeit product is produced in Southern California. We have documented sales and illicit product in over a dozen states and internationally in Canada, Mexico, Japan, Germany, England, Israel, Taiwan, Hong Kong, and the Peoples Republic of China.

Our case began with a twenty-two year old Chinese male attempting to have holograms counterfeited through a legitimate holographer. Holograms are three dimensional seals used as a security measure on the certificates authenticating the authenticity of the software product. We sold 7500 altered holograms to the suspect for ten thousand dollars. The suspect has had no legitimate job for over three years. The suspect was linked to seven different locations. This portion of the investigation resulted in the service of twelve search warrants. We seized 50,000 floppy discs, 10,000 counterfeit Microsoft manuals (DOS and Windows), 5,000 counterfeit holograms all with a potential retail loss of 4.5 million dollars. We seized plates used in the counterfeiting of the product, identified the printer, and seized computers used in the counterfeiting process. In this portion of the case several suspects were identified as members of the Wah Ching organized crime group.

In March, 1995, we were handling a kidnapping case in Rowland Heights (San Gabriel Valley). The victims, who had been beaten and humiliated during their detention by the criminals, were rescued. A subsequent search of the house where they were detained produced the following seized evidence. 7,000 Microsoft CD–ROMS "Encarta '95, 48,000 holograms, with a potential retail loss of 6.5 million dollars. The suspects in this portion of the investigation were tied to the Wah Ching, the Big Circle Boys, and others involved in the first case. The primary suspect had 800,000 dollars cash seized from bank accounts and a safety deposit box. He had 200,000 dollars worth of automobiles while claiming 13,000 dollars as income for his last two years of federal taxes. Also seized at the house was the machine used to emboss the CD's with the Encarta labeling and 4 pounds of plastic explosives, 2 pounds of TNT, shotguns, handguns, and silencers. The suspect was involved in gun running as well as counterfeiting.

In phase three of this investigation, we corroborated informant information and subsequently served nine search warrants. The main suspect was in Taiwan and has not yet been arrested. We seized 16,000 Counterfeit Microsoft manuals, 2,000 holograms, 150,000 floppy discs, 10,000 certificates of authenticity, and identified a shipment to Mainland China and Taiwan of 100,000 counterfeit manuals. The potential retail loss was 12.6 million dollars. Also, during this phase, we helped foil an attempt by a suspect to purchase 2,000,000 holograms with a potential retail loss of 60 to 200,000,000 million dollars. Information in this phase associated all three groups together in varying ways and associated this group to the Four Seas criminal group. We also uncovered the shipment of 20,000 counterfeit Microsoft units to Canada, with other documents showing a 400,000 dollar payment for illicit product to Taiwan. Based on our information, the R.C.M.P. seized 600 units of product during search warrant services in Canada. We also determined that a Chinese government printing agency is connected to the counterfeiting.

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We have recently been contacted by IBM regarding the counterfeiting of their software and by security companies about counterfeiting of clothing, watches, and handbags by Koreans.

RECOMMENDATIONS RE PROPOSED LEGISLATION

Recommendation 1.—I have an idea for a technical advancement that could be accomplished through a federal/private enterprise joint venture. It will greatly improve law enforcement's ability to combat sophisticated criminals throughout the nation. It will also help us keep pace with the ever, technically, advancing criminals.

Recommendation 2.—Our Microsoft investigation showed that many "legitimate" businesses were used to produce counterfeit product. There should be a provision in this Act to address complicity by legitimate businesses who don't take the time and precaution to contact the trademark or copyright holder before they engage in the duplication of product. This could be directed towards printers, holographers, etc.

COMMENTS RE PROPOSED LEGISLATION

Comment 1.—Current policy and procedure dictates that Federal Law Enforcement Agents must obtain a search warrant with the concurrence of an Assistant U.S. Attorney. This politicizes and slows a process that is supposed to be apolitical and timely. It also accounts for a general reluctance by Federal Agents to pursue important cases that are in conflict with the Attorney Generals' priorities and agenda. The federal process is contrary to the procedure enjoyed by the rest of the law enforcement community. We write our search warrant affidavits and go directly to judges for their review and signature. The federal process, in effect, subjects every investigation being conducted by Federal Agents, to the scrutiny and agenda of the "agent" for the politically appointed, Attorney General.

Federal law enforcement agencies should have oversight without a doubt. The review of a timely search warrant affidavit by a federal judge can account for this review, removing political agendas while speeding the process. It should be recognized that Federal Agents are competent to write a search warrant affidavit and they are able to articulate their probable cause to a judge. Changing this policy will also raise the morale of federal investigators with this display of confidence by management.

Comment 2.—To help speed the federal investigative process, the federal subpoena process should be expanded, where applicable.

Comment 3.—Trafficking in counterfeit software and other products should be a predicate act under the RICO statute. Actions to strengthen the aggressiveness of the U.S. Attorney's Office in Los Angeles should be a priority. The Los Angeles Strike Force is where local law enforcement's Asian organized crime cases are taken, by co-case Federal Agents, to be reviewed for possible federal prosecution. This Strike Force is not aggressive and has become a major stumbling block in the effort to produce a strategic plan to attack Asian organized crime.

Recently, our Microsoft case was presented to one of these attorneys. He found every reason why the case should not be tackled federally, i.e., copyright matters are not a federal priority, sentences issued for federal copyright violations are equal to state sentencing guidelines, RICO prosecution would not be considered because federal copyright violations are not a predicate act which falls under RICO, and Microsoft is a large, prosperous company that can take care of their problem. As you can see, there seems to be little circumspection or desire to consider how counterfeiting interplays with Asian criminal enterprise diversification.

Requiring Statistical reporting by the Attorney General of anticounterfeiting activities will also speed investigations.

Comment 4.—This legislation addresses the fact that there is a market for each and every component part of a counterfeit product. This is essential, as our investigations related to Microsoft products, described above, makes clear.

CONCLUSION

The investigation of Asian organized crime requires joint Federal and Local law enforcement cooperation. As it stands, federal law enforcement needs stronger laws to support expenditure of resources in the anticounterfeit efforts. This Anti-Counterfeiting Consumer Protection Act of 1995 will greatly enhance this effort.

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ANTI-COUNTERFEITING CONSUMER PROTECTION ACT, S. 1136—PREPARED STATEMENT BY MARK TRAPHAGEN, SPA COUNSEL

The Software Publishers Association (SPA) supports enactment of the Anti-Counterfeiting Consumer Protection Act of 1995 (S. 1136), which was introduced by Sen. Orrin Hatch and Sen. Patrick Leahy. SPA urges the Committee on the Judiciary to recommend that the U.S. Senate enact S. 1136 at the earliest opportunity.

SPA supports the Anti-Counterfeiting Consumer Protection Act (S. 1136) because it would help fight counterfeit trafficking in computer software, packaging, and documentation by significantly increasing criminal penalties and the authority of law enforcement to seize and destroy counterfeits, by increasing administrative fines and civil damage awards, and by requiring the U.S. Attorney General to identify U.S. trading partners who manufacture and traffic in counterfeits. These changes would emphasize the serious injury that counterfeiting causes to the software industry and consumers, and we hope encourage law enforcement to make counterfeiting a higher priority.

As the principal trade association of the personal computer industry, SPA is looked to by hundreds of software developers and publishers to protect their copyrights and other intellectual property around the world. SPA conducts a wide range of anti-piracy activities—including litigation, end-user education, and the development of software management tools—to educate personal computer users about the copyright law and provide them with the tools necessary to comply.

Counterfeits are defined by the Lanham Act as "a spurious mark which is identical with, or substantially indistinguishable from, a registered mark," and federal law also provides protection for unregistered marks. 15 U.S.C. § 1125(a) and § 1127. For consumers who purpose counterfeit software, there is the lack of technical support and the risks of computer viruses and malfunction at critical times. For software developers and publishers, the cost of counterfeiting is lost sales, customer disappointment, and irreparable damage to the reputation and market for their copyrighted works and trademarks.

The problem of software counterfeiting affects far more than just well-known business software companies, but also injures many other developers and publishers of software tools, entertainment titles, and even educational multimedia. SPA believes this problem is growing in both the U.S. and other countries. In June 1995, SPA found dozens of shops in Hong Kong openly selling counterfeit CD–ROMS of 60 business and recreational titles from over 30 SPA members. Many of these titles are not distributed in Hong Kong, but their wide availability suggests that they are being manufactured across the border in the People's Republic of China, where there are many optical disk factories. In July, SPA obtained preliminary injunctions against five software distributors alleged to have sold counterfeit games and consumer titles through organized trade shows in California.

Current federal law provides civil and administrative remedies, as well as criminal sanctions, to fight counterfeiting. There are limits to these civil remedies, however. For example, the registered trademark owner is not entitled to recover profits or damages for the making and affixing of counterfeit labels and packaging unless the defendant acted with knowledge and intent to cause confusion. 15 U.S.C.A. § 1114(1). In addition, the Lanham Act is clear that monetary recovery should constitute compensation and not a penalty. 15 U.S.C.A. § 1117. Moreover, trademark owners have long complained that law enforcement is often unenthusiastic to pursue these cases, and that a chronic shortage of federal marshals makes it very difficult to execute search and seizure orders against suspected counterfeiters.

CRIMINAL PENALTIES FOR SOFTWARE COUNTERFEITING

Because counterfeit labels, packaging, and documentation are sometimes manufactured apart from unmarked pirated software, SPA supports provisions that would amend 18 U.S.C. § 2318 to make it a criminal offense to knowingly traffic in counterfeit label affixed or designed to be affixed to a copy of a "computer program or computer program documentation or packaging." The sound recording and motion picture industries have enjoyed this protection for years, and SPA believes the time has come for computer programs and other software to be protected as well.

SPA supports defining this offense, as well as counterfeit trafficking and criminal copyright infringement, as "racketeering under 18 U.S.C. § 1961, which would authorize law enforcement to seize counterfeit goods and non-monetary assets used in illegal counterfeit enterprises, and to seek prison sentences of up to twenty years.

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INCREASE ADMINISTRATIVE REMEDIES FOR BORDER CONTROL

SPA also supports provisions that would increase the authority of the U.S. Customs Service to destroy amend 19 U.S.C. § 1526(e) to authorize the U.S. Customs Service to stop the re-exportation of counterfeit merchandise once it is seized, and to destroy counterfeits seized. SPA also supports provisions that would add a new subsection to 19 U.S.C. § 1526 that would authorize the Customs Service to impose fines on those involved in counterfeit trafficking, ranging from the market value of genuine merchandise for first offenders to double that value for repeat offenders.

INCREASED REMEDIES IN PRIVATE ENFORCEMENT ACTIONS

SPA supports provisions in S. 1136 that would amend 15 U.S.C. § 1117 to authorize courts to award statutory damages, ranging from $500 to $100,000 per mark for each type of merchandise involved, and up to $1,000,000 per mark for each willful violation for trademark counterfeiting. For 10 years, SPA has enforced copyrights in computer programs on behalf of hundreds of its members, and experience has shown that statutory damages in copyright infringement cases provide a critical incentive for infringers of computer programs to reach settlements in advance of litigation.

By giving trademark owners an alternative to the lengthy, uncertain, and expensive task of establishing actual damages and defendant's profits, the bill would give software developers and publishers the incentive to protect themselves by bringing civil lawsuits against counterfeiters. SPA also supports provisions that would amend 15 U.S.C. § 1116 to authorize all federal officers to conduct ex parte seizures of counterfeit merchandise.

In closing, SPA calls on the Committee of the Judiciary to recommend enactment of S. 1136 by the U.S. Senate. By increasing criminal and civil penalties and providing stronger means of enforcement, S. 1136 would improve the ability of the U.S. to protect software from counterfeiters, and elevate public awareness of the risks entailed by counterfeit products, their likely connections to organized crime, and their injury to U.S. industry and consumers alike.

PREPARED STATEMENT OF ROLEX WATCH U.S.A. IN SUPPORT OF S. 1136

Rolex Watch U.S.A., Inc. strongly supports S. 1136, a bill to amend the Federal trademark counterfeiting law, introduced in the United States Senate by the Honorable Orrin Hatch.

Rolex has been pursuing counterfeiters who manufacture and distribute watches bearing the Rolex name and crown device ("Rolex trademarks") for years and has expended considerable resources in this task. Despite our efforts, counterfeiting of Rolex products has continued due in large measure to the profits counterfeiters have made from stealing the Rolex trademarks and the limited civil remedies available to us.

Rolex has gone to great lengths to ensure that its products are of the highest quality and workmanship and has stressed this fact in advertising and promoting its products. The sale on the wholesale and retail markets of counterfeit watches falsely bearing the Rolex trademarks has caused great embarrassment to Rolex in that its wholesale and retail customers have complained to Rolex about the sale of such products. In several instances, owners of watches falsely bearing the Rolex trademarks have brought these counterfeit watches into authorized Rolex jewelers and authorized Rolex service centers to be repaired, believing their counterfeit watches to be genuine.

The sale of counterfeit watches falsely bearing the Rolex trademarks has undermined the sales credibility of genuine Rolex watches and has had the potential to reduce the demand for genuine Rolex watches. The sale of counterfeit watches is tarnishing Rolex's carefully-built reputation for selling only the finest products through quality retail establishments noted for reliability and excellence of merchandising and service.

Rolex has had a significant problem throughout the United States with regard to the sale of counterfeit Rolex watches by individual and corporate residents of the United States. We have commenced hundreds of civil lawsuits in the Federal Courts of the United States to protect our name and reputation, and we have worked extensively with various law enforcement agencies to try to combat this problem. Despite our diligent efforts, we have been often been stymied by a law with some weaknesses and procedural problems that make it difficult to take advantage of the remedies available, and provide little deterrence to counterfeiters.

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By adopting S. 1136, the United States will send a message to counterfeiters that this illegal activity will not be tolerated. Law enforcement agencies will be given a valuable and meaningful weapon to fight these crimes. Finally, these strong penalties will force those contemplating a career as a counterfeiter to think twice before setting up shop inside our Country's borders.

We strongly support S. 1136.

PREPARED STATEMENT OF LEE S. SPORN IN SUPPORT OF S. 1136, THE ANTI-COUNTERFEITING CONSUMER PROTECTION ACT OF 1995

This Statement is submitted by Lee S. Sporn on behalf of Polo Ralph Lauren, L.P., owner of the world famous Polo/Ralph Lauren trademarks, in support of S. 1136, The Anti-Counterfeiting Consumer Protection Act of 1995:

1. I am the Associate General Counsel of Polo Ralph Lauren, L.P. ("Polo"), and have been so employed for over five years. My responsibilities at Polo include the direction of our intellectual property protection program, in the United States and throughout the world. In addition, I am responsible for domestic and international licensing of our trademarks, a key component of our business, and one which makes it essential that we effectively protect our trademarks.

2. Polo supports S. 1136 in its entirety, and believes that its changes and clarifications of existing law would result in significantly enhancing our ability to protect our intellectual property.

3. Of particular importance to us are the provisions relating to the imposition of statutory damages in trademark counterfeiting cases. For many years, Polo has, as part of its overall strategy, brought civil actions against counterfeiters of our trademarks. In fact, given the difficulty in obtaining enforcement of federal, state and local criminal anticounterfeiting laws, civil actions remain a critical part of our program.

4. Unfortunately, it has always been the case that major counterfeiters have little to fear as a result of our civil lawsuits. There are many reasons for this, but chief among them is that counterfeiting is a cash business, on which income is rarely, if ever, reported (and on which taxes are rarely, if ever, paid), and which rarely results in record keeping. The few records that are kept are usually well hidden or coded so that a civil plaintiff is unlikely to be able to decipher them. (For example, invoices for "X shirts" are for Polo, invoices for "Y" shirts are for Disney, etc., which are useless from an evidentiary point of view unless one finds and proves the "key". On a related point, we have had some cases in which we have obtained documentation used to import large volumes of counterfeit merchandise, only to discover that the prices reflected in those documents have been grossly, and fraudulently, understated in order to avoid Customs duties.) Since, under current law, the burden of proof of damages is on the plaintiff, but the counterfeiting defendant sees to it that no such proof exists, the plaintiff is often incapable of satisfying the burden of proof.

5. A currently pending case is illustrative of the difficulty we have encountered in a multitude of cases over the years. Polo continues to pursue civilly an individual who for over two years set up a large distribution site for counterfeit merchandise in downtown Philadelphia. This individual was observed by Polo's investigators, over these years, selling large volumes of counterfeit merchandise. The profitability of his business is supported by the fact that, in response to certain actions we have taken, he surrendered substantial volumes of counterfeit merchandise, worth tens of thousands of dollars, without batting an eye or missing the next day's sales. In two separate lawsuits, the defendant has refused to identify sources, provide documentation regarding the extent of his business, or otherwise cooperate with Polo. During discovery, the defendant has asserted his 5th Amendment right not to answer our questions. As a result, while the District Court has ruled that the defendant, over the long period in question, willfully and intentionally violated Polo's rights by selling counterfeit merchandise and should be held liable for three times Polo's damages, the Court could not avoid finding that Polo must, nevertheless, prove what those damages are. In a hearing on this issue, the Magistrate assigned to the case has expressed the view that the volumes of merchandise surrendered by the defendant are not helpful to the damages inquiry, because they were not actually sold by the defendant and therefore did not result in damage to Polo. Further, our efforts to extrapolate, from the number of days our investigators saw the defendant and the amount of merchandise in his possession on those days, what he might have sold during the period and what his profits would have been, are considered too speculative a basis for a damage award. In addition to our own frustration, we have witnessed a frustrated Court, having already written an opinion condemning the defendant's conduct, searching in vain for a vehicle under current law by

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which to impose liability on the defendant sufficient to compensate the victim and deter future counterfeiting activities—the clearly stated intent of the Lanham Act. The availability of statutory damages under S. 1136 is the obvious solution to this problem.

6. Polo has, on numerous occasions, invested substantial investigative and legal efforts and fees to prepare for an ex parte civil seizure as permitted under the Lanham Act, only to find, once the seizure order is issued, that the U.S. Marshal's service is simply unable promptly to provide the personnel necessary to execute the Order. In connection with an ongoing civil seizure program in Washington, D.C., by way of example, this problem became so severe that the Court, uncomfortable in authorizing any agency other than the U.S. Marshals to execute the Order, became directly involved in discussions with the Marshal's office to try to obtain enforcement. The provisions in S. 1136, by simply clarifying the appropriateness of using other law-enforcement agencies to execute such seizure orders, would help ameliorate this problem and, in our view, would not result in any change of existing law.

7. The other changes provided for in S. 1136, and particularly those making trademark counterfeiting a predicate act under RICO, would all be a substantial benefit in the fight against counterfeiting.

PREPARED STATEMENT OF PAUL S. HOLDORF IN SUPPORT OF S. 1136, THE ANTI-COUNTERFEITING CONSUMER PROTECTION ACT OF 1995

This Statement is submitted by Paul S. Holdorf on behalf of Hoechst Celanese Corporation, owners of the trademarks CELANESE, CELCON and others, in support of S. 1136, the Anti-Counterfeiting Consumer Protection Act of 1995:

1. I am Vice President and General Counsel of the Advanced Materials Group of Hoechst Celanese Corporation ("Hoechst Celanese"). Hoechst Celanese manufactures plastic resins which are the raw materials used in the production of a wide variety of plastic products. As part of my responsibilities, I have overseen the efforts undertaken by Hoechst Celanese to combat the sale by unscrupulous plastics traders of plastic resin bearing counterfeits of Hoechst Celanese's trademarks.

2. Hoechst Celanese supports S. 1136 in its entirety, and we believe that its changes and clarifications to existing law would assist in our efforts to protect our valuable intellectual property.

3. Hoechst Celanese began to investigate the sale of counterfeit plastic resins in 1993 after a customer reported that CELCON resin purchased from a distributor was of questionable character. We determined that this resin was counterfeit despite the fact that it had been sold in packages bearing Hoechst Celanese trademarks and had been accompanied by what appeared to be Letters of Certification attesting to its genuine nature.

4. After a significant investigation, our company identified the source of this material. We thereafter commenced a lawsuit and effected a seizure under the Trademark Anticounterfeiting Act of 1984 (the "Act") of substantial quantities of counterfeit plastic resins. Hoechst Celanese has since uncovered additional instances of the sale of counterfeit CELCON resin, and has conducted additional seizures under the Act. We believe that the proposed revisions to the Act as embodied in S. 1136 would significantly enhance Hoechst Celanese's ability to protect its trademarks.

5. Of particular significance to us are the provisions relating to the imposition of statutory damages in trademark counterfeiting cases. This revision would enable Hoechst Celanese to make use of an effective deterrent to prevent future counterfeiting.

6. In the cases which have been brought by Hoechst Celanese under the present Act, the defendants typically contend, with no factual support, that they have made little or no profit from the sale of counterfeit CELCON resin, and that Hoechst Celanese would have difficulty in proving actual damages from such sales. The proposed statutory damage provision, which would permit the Court to fix a mandatory award of up to $1,000,000.00 in cases of willful counterfeiting would provide us with a meaningful counter to these arguments.

7. In addition, the provisions of S. 1136 that would permit law enforcement agents in addition to U.S. Marshals to participate in seizures are important to our anticounterfeiting program. In at least one of the seizure actions referred to above, despite the best efforts by the U.S. Marshals Service, we were unable to effect the seizure as promptly as circumstances warranted, in view of the unavailability of U.S. Marshals to accompany our counsel and private investigators. We full well sympathize with the time and personnel constraints under which the U.S. Marshals Service operates; and therefore we believe that S. 1136 which would permit seizures

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to be made by other federal law enforcement officers or state or local law enforcement officers, would again enhance our ability to protect our valuable rights.

8. Finally, the provisions of S. 1136 which aid the U.S. Customs Service in enforcement of U.S. intellectual property rights is particularly important to Hoechst Celanese. In our experience, much of the counterfeit CELCON resin which we have encountered is manufactured abroad and imported into the United States. Therefore, any steps (such as making destruction of seized counterfeit merchandise the rule rather than the exception, defining counterfeit products as "contraband" for purposes of allowing law enforcement officers to seize vehicles used in counterfeiting operations, and the like) would represent a welcome change to current law.

9. Hoechst Celanese is pleased that Congress is on the verge of taking serious and important measures to stop the sale of counterfeit merchandise. The sale of counterfeit plastic resins is a matter of significant concern to Hoechst Celanese, which produces plastic resins which are used in often critical end-use applications such as automotive and related industries. To the extent that resins are sold bearing counterfeits of our trademarks, we have no way of insuring that such resins will not be ultimately used in applications where safety could be a factor. Indeed, irrespective of the nature of the counterfeit resins involved, the sale of such counterfeit resins puts Hoechst Celanese at risk that it will be held liable for products over which it has absolutely no control, but which, without authorization bear its registered trademarks.

10. For the reasons set forth above, Hoechst Celanese wholeheartedly endorses passage of S. 1136.

PREPARED STATEMENT OF THE TIMBERLAND COMPANY ON S. 1136, THE ANTICOUNTERFEITING CONSUMER PROTECTION ACT OF 1995 SUBMITTED BY STEVEN J. OLECHNY, DEPUTY GENERAL COUNSEL

The Timberland Company, headquartered in Stratham, New Hampshire, strongly supports legislation to address the growing counterfeiting problem. Timberland designs, manufactures and markets premium-quality footwear, apparel and accessories for consumers who value the outdoors and their time in it. Timberland products offer quality workmanship and detailing and are built to withstand the elements of nature. Timberland strongly endorses S. 1136, the Anti-Counterfeiting Consumer Protection Act of 1995.

Since its founding, Timberland has invested vast human and financial resources in establishing its trademark worldwide. This investment has assured that the Timberland name is recognized and greatly desired by consumers for quality, innovation and style.

In 1982, the U.S. Trade Commission revealed that counterfeits cost the American economy $5.5 billion. Today it is estimated that losses due to counterfeits surpass $200 billion a year. Furthermore, the U.S. Customs Service reported that foreign counterfeiting of U.S. products cost 750,000 American jobs. Timberland, as a highly recognized name brand, has been the target for counterfeiters as well.

Unfortunately, current law fails to provide an effective statutory weapon against the domestic counterfeiter or the retailer who knowingly traffics counterfeit goods. Timberland believes S. 1136 addresses these deficiencies by combining significant criminal penalties, enhanced civil remedies and improvements in interdiction.

Timberland supports the proposed enhancement of federal criminal anticounterfeiting laws by making criminal copyright infringement and trafficking in counterfeit products, goods or services "predicate acts" under the RICO statute. As S. 1136 expands the power of law enforcement to seize the fruits, raw materials and tools of criminal counterfeiting enterprises, and provides an additional statutory basis for prosecution of counterfeiters, we believe the bill will help in the prosecution of those engaged in the trafficking of counterfeit Timberland products.

Timberland further supports the provision in S. 1136 which enhances our ability to gain civil remedies for counterfeiting by making it clear that any branch of federal or local law enforcement can execute an *ex parte* seizure order. This provision makes it easier for civil litigants, such as Timberland, with time-sensitive civil seizure orders to seize counterfeit goods before they vanish. These vanishing counterfeit goods have been a very real problem for Timberland and for other companies that are fighting the counterfeit market.

Timberland strongly endorses the provision which would grant us the option of obtaining discretionary, judicially imposed damages in trademark counterfeiting cases. As a civil litigant who confronts large-scale counterfeiters who have hidden or destroyed information about their counterfeiting activities, we know firsthand the significant difficulty that companies encounter in recovering money damages. The

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Act permits the judge, at the litigant's option, to fix a monetary award of up to $1 million in cases of willful counterfeiting, thus providing a meaningful alternative remedy.

The provisions of S. 1136 will put an end to the current policy which allows pirated goods seized by Customs to be returned to the pirate exporter. We believe it is essential to prevent counterfeit goods from being recirculated. Thus we support the provision of the Act which makes the destruction of seized counterfeit merchandise the rule rather than the exception, unless the trademark owner agrees to some other disposition.

The sale of counterfeit versions of our products robs us of sales while generating huge profits for those responsible. We think it is essential that Customs have the authority to impose civil fines on importers of counterfeit goods. Currently, Customs has insufficient opportunity to provide a significant civil deterrent to counterfeit importers other than seizure. By imposing civil fines tied to the fair market value of the seized goods for first-time offenders and doubling that for subsequent offenders, counterfeiters now will have a strong disincentive to import illegal counterfeit goods. The provision of S. 1136 which would allow law enforcement to seize vehicles, vessels and aircraft used in counterfeiting operations, and those provisions which would treat counterfeit products and labeling the same as counterfeit currency and government securities, are elements which we strongly support, for the same reasons.

Timberland believes that counterfeiting remains a large and growing problem for our company and for many others that have invested so extensively in their brand. As you stated at the hearing on October 10, the time has come to make sure that the law provides the tools necessary to fight today's sophisticated counterfeiters, In light of the many benefits for fighting counterfeiting, I again emphasize Timberland's support of the swift passage of The Anti-Counterfeiting Consumer Protection Act of 1995.

PREPARED STATEMENT OF CHANEL, INC. IN SUPPORT OF THE ANTI-COUNTERFEITING CONSUMER PROTECTION ACT OF 1995 (S. 1136) SUBMITTED BY VERONICA HRDY, ESQ., VICE PRESIDENT-COUNSEL AND ROBIN GRUBER, ESQ., ASSISTANT COUNSEL

Chanel, Inc. (hereinafter "Chanel") duly organized and incorporated under the laws of the State of New York, hereby submits this statement in support of S. 1136, the Anti-counterfeiting Protection Act of 1995 (hereinafter the "Act").

Chanel is the owner of the internationally renowned CHANEL and CC Monogram trademarks. Chanel, like many companies and consumers, is victim to the international and domestic explosion in counterfeiting. Newer counterfeiting technology, combined with the better domestic and international organization of the counterfeiters themselves (who are often tied to organized crime), has necessitated the update of the Trademark Counterfeiting Act of 1984 to reflect the changed realities in the world of counterfeiting.

Because counterfeiting has, until now, often been considered a "victimless" crime, a perception strengthened by lax anti-counterfeiting laws, the vast majority of those involved in counterfeiting have gone unpunished, and as a result, undeterred. Counterfeiting, however, is a crime with many victims. Not only are corporate trademark owners damaged through the loss of business, but unsuspecting consumers pay inflated prices for second-class merchandise, which is never under warranty. Additionally, if enough revenue is lost to counterfeiters, corporate growth is effected thereby forcing companies to lay-off employees or at least cease hiring for new positions. The loss of corporate and individual income revenue also limits the city, state and federal tax base, thereby effecting everyone.

Chanel has expended significant financial and human resources in its own fight against counterfeiting, but it is a fight that cannot be won without the support of stricter laws and law enforcement. The Act will not only greatly assist Chanel, and corporations like Chanel, in the private fight against counterfeiting, but will result in an overall improvement in the way the problem of counterfeiting is handled throughout the United States.

Specifically, the following provisions of the Act will greatly enhance the fight against counterfeiting:

1. All federal officers could assist in *ex parte* civil seizures of counterfeit merchandise (i.e. Customs, FBI, U.S. Marshalls, Secret Service and Post Office), creating more of a partnership between private industry and law enforcement in the war against counterfeiting.

2. Statutory damages would be made available as an alternative to actual damages in cases involving counterfeit goods. This would alleviate the need for expensive discovery procedures that make actual damages difficult to prove.

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3. Trafficking in counterfeit goods or services would constitute a "predicate act" for purposes of the criminal RICO statute, thereby increasing the likelihood of prosecution and punishment of those involved in counterfeiting.

4. The U.S. Customs Service would be permitted to impose a civil fine on individuals involved in the importation of counterfeit goods.

5. The U.S. Customs Service would no longer be permitted to re-export counterfeit goods and would be required to destroy all seized counterfeit merchandise unless some other disposition is consented to by the owner. The current practice of reexporting counterfeit goods only floods the international market with counterfeit goods.

Chanel applauds Senators Hatch's sponsorship of the Act and urges the Committee to pass the Act in its current form, without amendment.

PREPARED STATEMENT OF THE LYONS GROUP IN SUPPORT OF S. 1136—ANTI-COUNTERFEITING CONSUMER PROTECTION ACT OF 1995

The Lyons Group is the creator and owner of the popular Barney®, Baby Bop™, and BJ® children's dinosaur characters and the producer of the "Barney & Friends™" television series. The Lyons Group supports S. 1136, the Anti-Counterfeiting Consumer Protection Act of 1995. Trade in counterfeit, trademarked and copyrighted goods has become a serious problem in the United States. Such counterfeit goods cause economic harm to legitimate owners of the intellectual property rights usurped. Counterfeiters wrongly benefit from the tremendous investment made by legitimate owners in product development, manufacture, advertising, promotion and customer relations.

Counterfeit goods also damage consumer interests. They are of inferior quality, and the counterfeiter does not stand behind the goods. Counterfeiters do not hold their product to the stringent safety standards imposed on legitimate products, and their products often present health and safety risks. Passage of S. 1136 would protect the health and safety of consumers, as well as the legitimate economic interests of both trademark owners and legitimate retailers.

PREPARED STATEMENT OF THE AMERICAN AMUSEMENT MACHINE ASSOCIATION

My name is Robert C. Fay and I am Executive Director of the American Amusement Machine Association (AAMA), a national trade association that represents the manufacturers, distributors and parts suppliers of coin-operated amusement machines.

Over the years, our members have lost millions of dollars due to counterfeiting of printed circuit boards that are essential parts of video games. Strengthening the U.S. trademmark laws would assist our members by giving them greater protection against counterfeiting of their products. AAMA endorses S. 1136 in the hope that such legislation will strengthen intellectual property laws in the U.S. and give trademark owners increased protection for their products.

BUSINESS SOFTWARE ALLIANCE,
Washington, DC, October 13, 1995.

Hon. ORRIN G. HATCH,
Chairman, Senate Judiciary Committee, Russell Senate Office Building, Washington, DC.

Hon. PATRICK LEAHY,
Ranking Democratic Member, Subcommittee on Antitrust, Business Rights and Competition, Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR LEAHY: As president of the Business Software Alliance, I am writing to express our strong support for the Anti-Counterfeiting Consumer Protection Act of 1995. (We would appreciate you including this letter in the hearing record.)

As you know, BSA represents the leading publishers of software, including Autodesk, Bentley Systems, Intergraph, Lotus Development, Microsoft, Novell and the WordPerfect Applications Group, The Santa Cruz Operation, and Sybase. Our industry suffers extraordinary losses from piracy around the world. In 1994, the software industry lost more than $2.8 billion to piracy in North America alone. Currently, U.S. law does not adequately address the growing counterfeiting problem faced by the software industry. Provisions in this legislation will correct this inadequacy by making it a crime to traffic in counterfeit software labels and by provid-

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ing law enforcement officials with the necessary tools to confront the problem effectively. This, in turn, will help the U.S. software industry retain its leadership role in the global market and continue its robust growth in the United States.

We commend you for moving bill quickly and we look forward to working with you toward its enactment.

Sincerely,

ROBERT W. HOLLEYMAN, II,
President.

NO FEAR,
Carlsbad, CA, October 12, 1995.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: The following is a statement of support from No Fear, Inc., a Southern California based clothing company, for the Anti-Counterfeiting Act of 1995 that you are introducing into the Senate. This is a vital piece of legislation in the fight against counterfeiting.

No Fear, Inc. was created in 1990, and I am the Vice President of Trademark Security, and have been intimately involved with the affairs of No Fear, Inc. since that time.

No Fear, Inc. maintains stringent quality controls over all Products that are manufactured and sold under its trademarks.

No Fear, Inc. conducts extensive advertising and promotion of the Products sold under the "No Fear" federal registered trademarks. In 1992, not less than $Two Million was spent by No Fear, Inc. on advertising and promoting its federally registered "No Fear" trademarks.

As a result of the extensive advertising, promotional activities and quality Products, the sales of "No Fear" products have increased from $2.2 million in 1991 to $6.8 million in 1992 and $29.6 million in 1993. The 1994 sales of "No Fear" products exceeded $102 million.

In 1994, No Fear, Inc. spent approximately $750,000 in the effort to combat the counterfeiting of its Products. The 1995 figure in the effort to combat counterfeiting will easily exceed, $1,000,000. These monetary figures do not take into account No Fear, Inc.'s lost revenue suffered due to lost sales created by the counterfeiting of its Products.

The counterfeiting of our Products not only creates lost sales and revenues for No Fear, Inc., but first and foremost it damages our reputation with the consumer. When this occurs, "No Fear" products become less in demand, which leads to decreased sales, and ultimately the potential demise of No Fear, Inc.

The Anti-Counterfeiting Act of 1995 attempts to address many of the problems that individual trademark holders face when combating counterfeiting, and it is hopeful that the passage of this legislation will aid in eliminating this problem in the future. No Fear, Inc. strongly supports the overall strength and purpose of the Anti-Counterfeiting Act of 1995.

Respectfully,

MARTY MOATES, *Vice President, Trademark Security.*

IDSA,
New York, NY,
October 18, 1995.

Hon. ORRIN HATCH,
Chairman, Senate Judiciary Committee,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: The Interactive Digital Software Association ("IDSA") is pleased to submit these comments in support of S. 1136, The Anti-Counterfeiting Consumer Protection Act of 1995.

The IDSA was formed last year by leading U.S. manufacturers, publishers and distributors of interactive software. Our 37 member companies (see Attachment 1) are engaged in developing video game cartridges for dedicated video game platforms and CD–ROM entertainment software for use in personal computers and video game consoles. IDSA's members account for approximately 75% of the $5 billion interactive entertainment software industry. The IDSA is committed to enhancing the

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environment for the development, publishing, and marketing of interactive entertainment software products, both in the United States and around the world.

The IDSA and its member companies have a vital interest in measures to enhance the protection of intellectual property, including measures by Congress that will strengthen safeguards against violations of U.S. trademark law arising from counterfeit production of interactive entertainment software. Ideas and creativity are the driving forces in our business. For this reason, effective protection of intellectual property in the United States is critical to our members and essential to their growth and expansion. IDSA's members stand to suffer serious losses when interactive software products bearing counterfeit trademarks and piratical copies of interactive software products, are produced in the United States and abroad.

The IDSA commends the Judiciary Committee and S. 1136 for proposing to increase criminal penalties by making trafficking in counterfeit software labels, packaging, and counterfeit goods or services a RICO offense, resulting in increased prison sentences, criminal fines, and asset forfeiture. In addition, the criminalization of the sale of counterfeit computer software holograms and other packaging is a much needed update to the current statute. The IDSA also concurs with the bill's proposed changes in current anticounterfeiting law to increase federal and local law enforcement authority to seize both counterfeit goods and the equipment used to create those goods. Moreover, the IDSA supports the elimination of a provision in current law which allows seized piratical goods to be returned to the pirate exporter. S. 1136 ensures that seized counterfeit goods will be routinely destroyed and will stop the re-exportation of pirated software in the global marketplace, permitted under current law.

The IDSA strongly supports the increased civil remedies provided for in S. 1136, including fines equaling the value of the genuine goods, and statutory damages of up to $1,000,000 in cases of willful counterfeiting. Current law does not provide an effective statutory weapon against the domestic counterfeiter or retailer who knowingly traffics in counterfeit goods. By strengthening federal laws against counterfeit trademarks, S. 1136 will assist IDSA members to taking legal action against those who pirate our software and violate our trademarks.

We welcome the opportunity to continue to work with Congress in the future as Congress continues to strengthen intellectual property rights in the computer age. Please do not hesitate to contact us regarding ways in which we may provide additional support.

Very Truly Yours,

DOUGLAS LOWENSTEIN, *President.*

ATTACHMENT 1

IDSA's members include: Acclaim Entertainment (Oyster Bay, New York), Accolade (San Jose, California), Atari (Sunnyvale, California), BMG Interactive (New York, New York), Capcom (Sunnyvale, California), Capitol Multimedia (Bethesda, Maryland), Compton's New Media (Carlsbad, California), Crystal Dynamics (Palo Alto, California), Digital Pictures (San Mateo, California), Discovery Channel Multimedia (Bethesda, Maryland), Disney Interactive (Burbank, California), Electronic Arts (San Mateo, California), Fox Interactive (Beverly Hills, California), GT Interactive Software (New York, New York), GTE Interactive Media (Carlsbad, California), JVC Musical Industries (Los Angeles, California), Konami (Buffalo Grove, Illinois), Life Fitness (Franklin Park, Illinois), Merit Studios (Dallas, Texas), Mindscape (Novato, California), Namco Hometek (San Jose, California), Nintendo of America (Redmond, Washington), Ocean of America (San Jose, California), Panasonic Software Company (Secaucus, New Jersey), Philips Media (Los Angeles, California), Sega of America (Redwood City, California), 7th Level (Richardson, TX), Sony Electronic Publishing (Foster City, California), Spectrum HoloByte (Alameda, California), TerraGlyph Interactive Studios (Schaumberg, Illinois), The 3DO Company (Redwood City, California), Time Warner Interactive (Milpitas, California), Ubi Soft (Larkspur, California), universal Interactive Studios (Universal City, California), Viacom New Media (New York, New York), Virgin Interactive (Irvine, California), and Williams Entertainment (Corsicana, Texas).

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HAYNSWORTH, MARION, MCKAY & GUÉRARD, L.L.P.,
Greenville, SC, October 11, 1995.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington DC.

DEAR SENATOR HATCH: The purpose of this letter is to express my support for the Anti-Counterfeiting Act of 1995 introduced by Senator Orrin Hatch. As counsel for No Fear, Inc., I have recently experienced some of the problems which this legislation attempts to address. As an attorney who has participated in numerous trademark seizures, I am pleased to see that the Act provides for statutory damages and the seizure of more than just counterfeit goods, while also emphasizing statutory RICO implications and the broader use of law enforcement officials.

Recently, as counsel for No Fear, Inc., I participated in a seizure of counterfeit apparel from retailers in Ocean City, Maryland. In that case, I made a motion to the United States District Court for the District of Maryland for ex-parte seizure and expedited discovery under the Lanham Act. I also asked the court to order the United States Marshals to conduct the seizure. In the event that the Marshals did not have the personnel, I asked the judge to include in his order the use of local law enforcement officials. The court was very concerned about its jurisdiction over local law enforcement officials in conducting a seizure pursuant to a federal act and decided not to order local law enforcement involvement. Instead, the Court simply ordered the United States Marshals to use their best efforts in conducting the seizure.

The United States Marshals could only provide four marshals. Since there were eight establishments involved in the seizure, it was impossible to conduct the seizure simultaneously at each establishment. Because of the lack of personnel, we could only conduct the seizure at two establishments at a time, consequently, some of the stores were able to hide the counterfeit apparel before the marshals appeared. Broadening the use of more law enforcement officials, whether federal or state, would render the seizures more successful, especially when counterfeiting establishments are not in the same immediate area but are under the same management.

Increasing the amount of statutory damages to trademark holders in counterfeit actions is a positive development. Often counterfeiters will intentionally not keep records of the amount of the counterfeit product they purchased and/or manufactured and sold to the public. This makes it almost impossible to obtain the profits made by the counterfeiting establishments. Having statutory damages which are substantial, will greatly curtail counterfeiters and provide the trademark holder with certain monetary relief. Usually, counterfeiters regard a permanent injunction and the cost of litigation as simply "the cost of doing business." Even though counterfeiters may be permanently enjoined from infringing on one mark, they will simply proceed to counterfeit another. Therefore, the statutory damages and the RICO implications will go a long way in putting a stop to the repetitive activities of counterfeiters.

Again, as an attorney who has participated in numerous counterfeiting cases, I support the overall purpose and strength of the Anti-Counterfeiting Consumer Protection Act of 1995 and I feel that it will help substantially in the fight against counterfeiters. Please let me know if I can be of any assistance to you in seeing that the Act becomes law.

With kindest regards, I am

Very truly yours,

BRENT O. E. CLINKSCALE.

TOMMY HILFIGER LICENSING, INC.,
Wilmington, DE, October 11, 1995.

Re: Anti-Counterfeiting Consumer Protection Act of 1995—Senate Bill 1136

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: Tommy Hilfiger Licensing, Inc. would like to acknowledge its support of the above referenced Bill and its commitment to the passage and implementation of this Bill to assist in combating the ever growing counterfeiting problem in the United States.

Sincerely,

STEVEN R. GURSKY, *Secretary.*

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GURSKY & BLAU,
New York, NY, October 13, 1995.

Re: Anti-Counterfeiting Consumer Protection Act of 1995—Senate Bill 1136

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: Our client, Nautica Apparel, Inc. would like to acknowledge its support of the above referenced Bill and its willingness to assist in the passage and signing of the Bill.

Sincerely,

GENARO R. HATHAWAY.

SABAN ENTERTAINMENT,
Burbank, CA, August 7, 1995.

Re: Anti-Counterfeiting Consumer Protection Act of 1995

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: I am counsel for Saban Entertainment, Inc. the owner of the Mighty Morphin Power Rangers. The Anti-Counterfeiting Consumer Protection Act of 1995 is a very important act to Saban and its consumers.

My primary responsibility at Saban is to stop the infringement of the Mighty Morphin Power Rangers trademarks and copyrights. In the last year, Saban has seized some $10 million of counterfeit Mighty Morphin Power Rangers merchandise. Stronger laws are needed to deter counterfeiters from repeatedly violating intellectual property owners' rights.

Counterfeiting of trademarked products hurts the public as well as the trademark owner. Counterfeiters deal in cash and do not pay sales tax. Because of this, they have an unfair advantage over local retailers who operate within the confines of the law. Importantly, Power Rangers fans are quite young, often as little as two years old. When a consumer buys a product they believe is licensed, they have expectations that it will be safe and that the owner will stand behind it. The counterfeits are invariable cheap copies which fall quickly into pieces. Thus, consumer safety is perhaps the most important reason to pass stronger legislation in this area. We at Saban live in fear that a child will be harmed by a knock-off Power Rangers toy.

Several provisions of the Anti-Counterfeiting Consumer Protection Act of 1995 are major improvements over the existing law. First, the availability of statutory damages is very much needed. Under the current law, a trademark holder must establish the profits of the counterfeiter. Relevant documents are rarely turned over, if they exist. Second, I strongly support the provision requiring Customs to destroy counterfeit merchandise, rather than exporting it. Customs is unable to check more than approximately one out of two hundred shipments. The result is that counterfeit goods exported at one Customs location slip in undetected at the next. Finally, any increased penalties, such as the seizure of vehicles used to transport bogus goods, translates to more effective deterrence against future crimes. We must send a strong message to the counterfeiters and would-be counterfeiters. Saban strongly supports passage of The Anti-Counterfeiting Consumer Protection Act of 1995.

Please call me if you have any questions. I would be happy to provide you with samples of counterfeit merchandise or any other information you might require.

Sincerely,

ANGELA SMALL,
Vice President, Legal Affairs.

NINTENDO OF AMERICA INC.,
Redmond, WA, September 29, 1995.

Senator ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: Nintendo of America Inc. strongly supports your introduction of S. 1136, the Anti-Counterfeiting Consumer Protection Act of 1995, which should provide strengthened enforcement remedies against counterfeiters.

As you know, counterfeiting is a growing threat to companies in the video game industry. Nintendo of America Inc., its developers, licensees and the licensed prop-

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erty owners who license sports events, cartoon characters and motion pictures to the video game industry, all suffer serious damages from the production and sale of counterfeit video game products.

Our industry depends on the protection available under the civil and criminal provisions of the copyright and trademark laws of the United States and assistance from the U.S. Customs Service and Federal prosecutors.

We favor S. 1136 because it provides our industry with enhanced Customs and criminal law enforcement tools to address counterfeiting. In particular, we are very pleased with the provision for statutory damages in trademark counterfeiting cases since trademark owners are often unable to provide actual damages.

In addition, providing Customs with additional authority to impose fines, increase scrutiny of aircraft manifests, and to require the seizure and destruction of all counterfeit merchandise will substantially improve the ability of Customs to serve as the most effective first line of defense against the importation of counterfeit products.

Customs has done a superb job in protecting U.S. borders from the entry of counterfeit products. The additional remedies and penalties contained in your bill should increase the effectiveness of the partnership between intellectual property owners, law enforcement authorities and Customs in safeguarding intellectual property rights.

I have asked our Washington counsel, Jim Bikoff of Arter & Hadden, to provide to Shawn Bentley, your legislative assistant, samples of authentic and counterfeit Nintendo video games for your use in seeking passage of the proposed legislation if that would provide helpful. Please do not hesitate to contact us if we can provide you anything further to help pass S. 1136.

Very truly yours,

LYNN E. HVALSOE, *General Counsel.*

THE WALT DISNEY COMPANY, INC.,
CONSUMER PRODUCTS DIVISION,
New York, NY, August 7, 1995.

Re: Anti-Counterfeiting Consumer Protection Act of 1995

Hon. ORIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Dirksen Senate Office Building, Washington DC.

DEAR SENATOR HATCH: The Walt Disney Company is a strong supporter of the above bill which you are sponsoring. It is important, and we appreciate the leadership role you have undertaken very much.

Particularly at a time when the U.S. is trying hard to get foreign countries to provide stronger means to combat the enormous problem of world wide trademark counterfeiting, we need to pay attention to what is going on at home.

I know that you are aware of many of the problems being caused by trademark counterfeiting in the U.S. I had the privilege of hearing your video-taped address to the International Anticounterfeiting Coalition at its Spring Meeting this year.

I see counterfeiting as an evil which affects the public and companies in equal measure, which deprives the Government of hundreds of millions of tax dollars, which victimizes consumers and which costs the jobs of American working people. American industry is cooperating together and working hard to fight this problem. We need help, and we very much appreciate your interest and sponsorship of this bill. It will materially improve the tools available.

Very truly yours,

ROBERT S. OGDEN, JR., *Vice President.*

WARNER BROS.,
CONSUMER PRODUCTS,
Burbank, CA, August 7, 1995.

Re: Anti-Counterfeiting Consumer Protection Act of 1995

Senator ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: Warner Bros., and its affiliated companies within the Time Warner family, enthusiastically endorse the proposed Anti-Counterfeiting Consumer Protection Act of 1995.

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In 1994, consumer products bearing trademarks belonging to Warner Bros. and its affiliated companies generated over $2 billion of sales at the retail level. Warner Bros. licenses its trademarks to businesses of all sizes throughout the United States. While Warner Bros. does make a reasonable profit based upon royalties for these sales, the vast amount of the money ends up in the pockets of our licensees, their manufacturers of authorized products, the retail stores that sell the products, and the employees of all of the foregoing. In other words, what is good for the American intellectual property owners, really is good for America.

Unfortunately, as you know, the manufacture and sale of counterfeit products bearing our trademarks and the trademarks of others is a terrible problem in the United States, a problem which takes money out of the chain of commerce mentioned above and, in addition, deprives local and state governments across the United States of an important tax revenue base.

Although there is a federal trademark anti-counterfeiting law in place, this law has not been sufficient to stem the tide of counterfeit products manufactured and sold in the United States. We believe that the proposed Anti-Counterfeiting Consumer Protection Act of 1995 will go a long way in giving law enforcement the power it needs to make a real dent in this problem.

Warner Bros. specifically wants to thank you personally for your continued interest in the anticounterfeiting campaign and for your leadership in the introduction of this important piece of legislation.

Should you or the Committee have any questions, or if we can assist you in any way in the passage of this bill, please do not hesitate to contact us.

Very truly yours,

NILS VICTOR MONTAN, *Vice President.*

EASTMAN KODAK COMPANY,
Rochester, NY, September 5, 1995.

Hon. ORRIN G. HATCH,
Chairman, Senate Judiciary Committee,
Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: As Vice Presidents and General Managers of Eastman Kodak Company's Consumer Imaging and Professional and Printing Imaging Divisions, we are writing to express our strong support of the Anti-Counterfeiting Consumer Protection Act of 1995, S. 1136, which you introduced on August 9, 1995.

As you know, Kodak is the leading manufacturer of consumer imaging products, with a brand-name recognized worldwide. Unfortunately, that universal recognition makes us a frequent target of counterfeiters who seek to take advantage of our trademark and mislead our customers with fraudulent products. Currently, U.S. law does not adequately provide law enforcement officials with the tools to confront this problem effectively, nor does it provide us with the ability to obtain information necessary to assist them. This legislation will address the situation. We are particularly pleased with the expanded Customs reporting requirements. The disclosure of air manifest data and trademark information will be of invaluable assistance in identifying counterfeit merchandise and the location of the counterfeiters.

We applaud your continued efforts in this area and are looking forward to working with you on this issue in the future. If members of your staff would like to contact someone here at Kodak for more information about Kodak's position, they should call James M. Quinn at 716–724–2479.

Sincerely yours,

DAVID P. BIEHN,
Vice President & General Manager, Consumer Imaging Division.
RICHARD G. PIGNATARO,
Vice President & General Manager, Professional & Printing Imaging Division.

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HUNTING WORLD, INC.
Sparks, NV, September 6, 1995.

Hon. ORRIN G. HATCH,
Chairman, Senate Judiciary Committee,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: Hunting World, Incorporated, is interested in and supportive of S. 1136, the Anti-Counterfeiting Consumer Protection Action of 1995. We hereby request an opportunity to present testimony in the event that the Judiciary Committee holds hearings on this important legislation.

Hunting World manufactures and markets some of the world's finest luxury merchandise. The company is known worldwide for its exclusive upscale products, all of which are intricately designed, tailored and tested for top-of-the-line quality and durability. It's wide array of merchandise includes luggage, carryall bags, packs in all shapes and sizes, fine handbags, apparel, Swiss watches, wallets, ties, scarves and jewelry. Due to the standard of excellence for its products, Hunting World's genuine products are available in only about 100 exclusive shops around the world.

Every piece of Hunting World merchandise is meticulously crafted, with every stitch and seam examined to ensure absolute premium quality. Hunting World customers value the craftsmanship found in every piece of merchandise from the company. However, the same cannot be said of counterfeits of Hunting World merchandise, which are sold in Europe, Asia, and the U.S.

Available information suggests that, in 1992 and 1993, more than $320-Million per year of counterfeit Hunting World merchandise was sold by known counterfeit operators worldwide, as well as an unknown volume of sales by undetected sources. Conventional wisdom at that time was that only the laws of the U.S. offered significant remedies, and that the situation in other countries would most likely remain unaddressed.

In fact, however, the opposite has proven true. Through vigorous enforcement efforts and cooperation with authorities, Hunting World has succeeded in interdicting the flow of large shipments of such counterfeit merchandise in important markets, but has not been able to score any significant gains in the U.S. with governmental assistance.

In Japan, the 1993 announcement of Hunting World's new anticounterfeiting measures resulted in a press conference attended by 140 media representatives, and the resulting arrests and raids were the Number One subject of national televised news every day for two weeks. In Italy, the 1994 detection of the manufacture of counterfeit Hunting World merchandise resulted in the largest coordinated series of raids ever carried out against counterfeiters, hitting 63 factories that were also counterfeiting Louis Vuitton, Chanel, Prada, Dunhill and other fine brands.

But in our home country, no U.S. authorities have taken action based on our complaints against proven counterfeiters of Hunting World goods, other than occasional Customs ports reporting that goods were interdicted without informing us of the identities of the shippers or importers. In one notable case, our investigation implicated Charles Bogar, a California resident whose companies have been sued civilly for counterfeiting on at least six occasions without any criminal enforcement activity. Our own effort for a civil remedy against Mr. Bogar (who has now signed a consent judgment for our charges of selling millions of dollars worth of counterfeits), involved three years of litigation, in which it was our private burden to fight his defense team of nine law firms, through the courts of eleven federal and state court judges. Through all of this time, we repeatedly contacted the U.S. Attorney office and turned over all of our compiled evidence to investigators. However, there were no criminal charges filed for underreported or unreported income, undervalued imports for customs duties, forgery, criminal violations of the Lanham Act, RICO violations, or any other acts related to his importation or sale of the infringing articles.

Unfortunately, we can report other cases in which we have requested action by enforcement agencies without receiving any support or activity. It has been surprising and disappointing for us to learn that the actual protection of our intellectual property rights in the United States is inferior to that available in other countries unless we are capable and willing to spend enormous sums of money to fight private battles.

We support S. 1136 and any amendments to strengthen actual punishment of counterfeiters, who have cost our brand many millions of dollars. We also support any effort by you or your committee to cause real enforcement of anticounterfeiting laws against parties who freely and repeatedly violate anticounterfeiting legislation.

We have been invited to address the Customs Intellectual Property Information Center of the Japan Tariff Association in February, 1996, reporting on the great anticounterfeiting successes of our cooperation with Japanese Customs and police

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authorities, who have succeeded in virtually eliminating counterfeits of our products in just two years. We hope the day will come when we can report similar cooperation with the authorities of our home country.

Very truly yours,

JAMES L. MCNISH,
Chief Legal Officer & Corporate Secretary.
RACHAEL A. SULLIVAN,
Senior Investigative Analyst.

PROCTER & GAMBLE,
September 27, 1995.

Hon. ORRIN G. HATCH,
Chairman, Senate Judiciary Committee,
U.S. Senate, Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR HATCH: I am writing to express our support for the Anti-Counterfeiting Protection Consumer Act of 1995 (S. 1136).

Procter & Gamble manufacturers and markets over 100 brand-name consumer products in the United States, generating domestic sales of over $16 billion per year. Our brands represents a standard of quality to consumers, and are central to creating value for our shareholders. We believe that the trademarks which support our unique packages, emblems, and designs are among the most valuable items of intellectual property we possess.

As you may know, we vigorously protect our trademarks to the extent allowed by current law. It is our opinion that S. 1136 strengthens existing law through broadened federal oversight and enforcement provisions. Our experience indicates that such legislation is much needed to protect manufacturers and consumers from trademark pirates.

In particular, we commend the inclusion of provisions for statutory damages in S. 1136. This element dramatically strengthens our position when we take action to defend ourselves against counterfeiters.

We applaud the efforts of you and your fellow Senators who are co-sponsors to S. 1136 and stand ready to support your efforts to enact this bill into law.

Sincerely,

R. SCOTT MILLER,
Director, National Government Relations.

OAKLEY, INC.,
Irvin, CA, October 3, 1995.

Hon. ORRIN HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate,
Dirksen Senate Office Building,
Washington, DC.

Re: Anti-Counterfeiting Protection Act of 1995 (S. 1136).

DEAR SENATOR HATCH: I understand that the Anti-Counterfeiting Protection Act of 1995 will receive a hearing before the full Senate Judiciary Committee on October 10, 1995.

Oakley, Inc. strongly supports your anti-counterfeiting efforts and hopes that the Senate Judiciary Committee understands the need for the proposed Protection Act.

As you may know, Oakley, Inc. is a manufacturer of a unique line of sunglasses which are sold throughout the world, but made here in the U.S. Our glasses sell in retail stores from between $100. to $225. and represent over 200 million dollars in sales for our accounts each year. All glasses are made here in Irvine, California and are not contracted out to third parties either in the U.S. or overseas.

We promote our glasses as sports application eyewear which means that they have to meet the toughest standards available, or ANSI Z87.1, for impact resistance. We have come across thousands of pairs of counterfeit glasses sold making this claim on the counterfeit packaging. Consumers across the country are believing they are purchasing a safe, impact resistant product. When a consumer purchases a counterfeit Oakley® product, they risk extreme eye damage.

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The counterfeiters typically also claim that they meet 100% UV protection. Rarely is this true. Again, the consumers is the one who will suffer the repercussions of such claims.

Many of our glasses are promoted as a safely glass for users such as the police force and recreational shooters as the lens material used in our glasses can stop a 12 gauge shotgun blast from a distance of 15 yards. This is a claim that can not be substantiated by the manufacturers of counterfeit Oakley® glasses and, sadly, again may result in serious injury to the consumer.

EXACT COPIES

In early 1994, we became aware of nearly exact copies of our glasses and began receiving calls from retailers and sale representatives regarding very sophisticated counterfeit Oakley® glasses.

The glasses are so nearly identical in their design, that the manufacturing process needed to produce them would cost a minimum of:

Lens mold	$85,000
Machine to run above	175,000
Frame mold	60,000
Machine to run above	105,000
Lens cutting machine	35,000
Coating machine	1,000,000
Minimum total	$1,460,000

These figures do not include the cost of packaging or distribution. In our opinion, the only people with the sophistication and financial capability to handle such an endeavor would be those connected to organized crime. It would also appear, based on the figures above, that they plan to sell a very large number of these glasses in order to recoup their costs.

We wish you success in your hearing.

Sincerely,

DONNA W. SANDIDGE, *Legal Administrator.*

RECORDING INDUSTRY ASSOCIATION OF AMERICA,
Arlington, TX, August 8, 1995.

Hon. ORRIN. G. HATCH,
Chairman, Committee on the Judiciary,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: The Recording Industry Association of America, Inc. (RIAA), a trade association whose members produce, manufacture, and distribute approximately 90% of all legitimate recorded music made in the United States, supports the "Anti-Counterfeiting Consumer Protection Act of 1995." Counterfeiting of our members' products and trademarks is a vital part of the overall scheme used by those who would violate the law to defraud consumers. Whenever a consumer purchases a counterfeit sound recording, the following occurs:

1. Recording artists lose royalties and fees;
2. Musicians are denied income received on the basis of number of copies sold;
3. Earnings of composers and publishers are adversely affected;
4. The recording industry is denied income needed to assume the risk involved in investing in new recordings and developing new talent;
5. Most importantly, the public is victimized through the deceptive practices of counterfeiters whose product is marketed as legitimate, but which has none of the quality control used in the manufacture of genuine goods.

We applaud your efforts and the attention given to this important piece of legislation.

Very truly yours,

DON VALDEZ, *Vice President.*

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THE COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION,
Washington, DC, August 30, 1995.

Senator ORRIN G. HATCH,
Russell Senate Office Building,
Washington, DC.

DEAR ORRIN: On behalf of the 575 members of the Cosmetic, Toiletry and Fragrance Association (CTFA), I would like to commend you for introducing S. 1136, the Anti-Counterfeiting Consumer Protection Act of 1995. As you pointed out in your press conference introducing the bill, counterfeit personal care products are a part of this growing problem, and we enthusiastically support this legislation.

Counterfeiting can have a negative impact on both the safety of a product and consumer confidence. Today, consumers are being duped by bogus personal care products such as perfumes, colognes, soaps, shampoos and deodorants. Some of these counterfeit products pose potential risks to users because of contamination, improper labeling and ingredients. Also, the rising tide of counterfeit personal care products is having a significant impact on American industry in terms of lost jobs and revenues.

CFTA has worked vigorously in the past both on its own and with the United States Customs Service to strengthen anticounterfeiting measures. S. 1136 contains an important provision that will help Customs fight counterfeiting. This provision, Section 12, requires importers to disclose information on entry documentation such as may be necessary to determine whether the imported merchandise bears an infringing trademark. This is an important step to help Customs identify infringing goods and enhance border enforcement of intellectual property rights.

Thank you again for your leadership on this issue.

Cordially,

E. EDWARD KAVANAUGH, *President.*

COALITION TO ADVANCE THE PROTECTION OF SPORTS LOGOS,
La Canada, CA, October 6, 1995.

Re: Anti-Counterfeiting Protection Act of 1995

Senator ORRIN HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office, Washington, DC.

HONORABLE CHAIRMAN: The Coalition to Advance the Protection of Sports logos (CAPS), whose members include The Collegiate Licensing Company, Major League Baseball Properties, NBA Properties, Inc., National Football League Properties, Inc., NHL Enterprises, Inc., and Starter Corporation, was formed in 1992 to police the country against the illegal use of the trademarks and copyrighted items owned or licensed by CAPS' members.

Over the past three years CAPS has been successful in the seizure of millions of dollars in counterfeit goods and, with the assistance of various state and local criminal anticounterfeiting laws, we have also assisted in the arrest of hundreds of defendants guilty of counterfeiting throughout the United States. However, our enforcement efforts fall short when it comes to the prosecution of these defendants. Because counterfeiting is oftentimes viewed by the public and public officials as a victimless crime, the defendants, who most often are repeat offenders, usually receive a minimal fine or sentencing similar to that of a minor traffic violation. In most instances, the punishment does not fit the crime and at the very least does not act as a deterrent against repeat offenders.

CAPS members currently license several hundred legitimate manufacturers and distributors to produce licensed sports memorabilia. Our office continues to receive complaints from licensees, legitimate retailers and wary consumers of the sales of counterfeit goods nationwide. CAPS continues to tackle the problems as they arise, but the current federal trademark statute does not provide sufficient remedy for prosecution of persistent counterfeit sales. As a result, counterfeiters continue to produce and sell illegal product.

CAPS members' licensees and retailers also complain that they are unable to compete with the below market value of the counterfeit product. Licensed league and collegiate product must adhere to strict quality control guidelines and each licensee is required to maintain product liability insurance in case of unforeseen injury to the consumer. Licensees also go through a very strict application process to confirm that the business is a viable company adhering to state and federal laws. In contrast to this, counterfeiters produce inferior product with no concern to the end user,

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oftentimes they do not pay state or federal taxes and employ illegal aliens who are forced to work in extremely unhealthy and dangerous conditions.

Statistics indicate that the manufacture and sale of counterfeit goods in the United States is on the rise. No legitimate U.S. based company is immune from the theft of its name and popular marks. The sale of counterfeit goods will continue and most assuredly worsen unless government officials take a stronger course towards the prosecution of counterfeiters.

CAPS members have taken an active role in the drafting and lobbying of the anticounterfeiting Protection Act of 1995, because it provides adequate penalties for excessive and repeat counterfeit sales. It also establishes statutory damages, requires Federal authorities to maintain statistical information regarding the illegal trafficking of counterfeit goods and provides for imposition of necessary fines for importation of counterfeit goods. These additional remedies are necessary to stop the rampant spread of counterfeit product throughout the United States. The members of CAPS strongly support the Anti-Counterfeiting Protection Act of 1995.

If you wish to discuss any of the issues addressed in this letter, please do not hesitate to call.

Very truly yours,

LISA A. URIGUEN, *Administrator.*

IMAGING SUPPLIES COALITION FOR
INTERNATIONAL INTELLECTUAL PROPERTY PROTECTION, INC.
Lexington, KY, October 11, 1995.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

The Imaging Supplies Coalition for International Intellectual Property Protection, Inc. strongly supports S. 1136, the Anti-Counterfeiting Consumer Protection Act of 1995.

Our research indicates that product counterfeiting costs the imaging supplies industry, (computer and typewriter ribbons, copier toner, ink and toner cartridges, etc.), hundreds of millions of dollars each year in the United States. In addition to the economic impact on our member companies, the independent wholesalers, dealers and distributors are victimized by having to compete with counterfeiters that don't pay taxes and are not concerned about the consumers.

In addition to our economic concerns, we are anxious about the materials used in counterfeit supplies products. Legitimate manufacturers provide Material Safety Data Sheets that assure consumers that the chemicals used in manufacturing their products are safe for them and the environment. Pirates will use whatever is available to them at the lowest cost without health and safety considerations.

Thank you for your leadership in protecting consumers, independent business people and trademark owners from these counterfeiters.

Sincerely,

WILLIAM P. ENRIGHT, *President.*

PROFESSIONAL LOSS PREVENTION CONSULTANTS,
Columbus, OH, October 4, 1995.

Hon. ORRIN HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: I am writing to thank you for your sponsorship and support of the Anti-Counterfeiting Protection Act of 1995. I particularly enjoyed your speech on the subject which was shown at our IACC annual meeting in Orlando. My firm is involved in the national and international fight against the white collar crime of counterfeiting and we are an active member of the IACC.

It takes a politically intrepid and insightful legislator to recognize the threat that counterfeiting poses and act to combat it, in an era where passions are more easily inflamed over the violence in our streets and the state of the American economy. What citizens fail to understand, however, is the interrelationship between these issues.

Counterfeiting is estimated to be a 200 billion dollar a year business that costs the US hundreds of thousands of jobs. It fuels an underground economy that pays no taxes. It funds various foreign and domestic organized crime groups and spirits our technological advances and research, development and marketing efforts away.

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If even a portion of the lost revenue, jobs and technology could be recovered, this would be a significant boost to the economy and job creation, as well as a major blow to the funding of organized crime and the violence it spawns.

I have been involved in investigations and consulting for over twenty years. When I was with the police, I specialized in white collar and organized crime. It has been my experience that white collar and organized crimes, like counterfeiting, erode our economy, job creation, the tax base and the social and educational programs taxes fund. It is a root cause of other societal ills.

Counterfeit products in the US endanger the public, directly, through apparel that does not meet flame retardancy standards, auto, airplane andaheavy equipment parts that do not meet technical specifications, consumables, such as baby forumula, which do not provide proper nutrients, personal products, such as shampoo, which may cause skin irritation or infection and toys which have breakaway parts that endanger small children, to name a few. While legitimate corporate citizens have social responsibility to provide safe and effective products for the consuming public, counterfeiters are only concerned with the quick buck and a clean getaway.

The private sector is more than willing to do its part in the assault on American intellectual property rights. Allowing the private sector to work more closely with law enforcement, in general, for the common good, prohibiting the re-export of counterfeit goods amending disclosure requirements and increasing civil penalties will add new weight to federal anticounterfeiting law and provide the industry with the tools it needs to respond to the modern scourge of piracy.

I applaud and support you and your colleagues in your efforts. I have enclosed an article which you may find informative and are welcome to reprint, if it would be helpful. If there is anything else we can do to assist you in passing your legislation, we stand ready to serve you.

Sincerely,

VINCENT L. VOLPI, *President.*



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