

104TH CONGRESS
2D SESSION

S. 1136

AMENDMENT

In the House of Representatives, U. S.,

June 4, 1996.

Resolved, That the bill from the Senate (S. 1136) entitled “An Act to control and prevent commercial counterfeiting, and for other purposes”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause, and insert:

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Anticounterfeiting*
 3 *Consumer Protection Act of 1996”.*

4 **SEC. 2. FINDINGS.**

5 *The counterfeiting of trademarked and copyrighted*
 6 *merchandise—*

7 *(1) has been connected with organized crime;*

8 *(2) deprives legitimate trademark and copyright*
 9 *owners of substantial revenues and consumer good-*
 10 *will;*

11 *(3) poses health and safety threats to United*
 12 *States consumers;*

13 *(4) eliminates United States jobs; and*

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

16 **SEC. 3. COUNTERFEITING AS RACKETEERING.**

17 *Section 1961(1)(B) of title 18, United States Code, is*
 18 *amended by inserting “, section 2318 (relating to traffick-*
 19 *ing in counterfeit labels for phonorecords, computer pro-*
 20 *grams or computer program documentation or packaging*
 21 *and copies of motion pictures or other audiovisual works),*
 22 *section 2319 (relating to criminal infringement of a copy-*
 23 *right), section 2319A (relating to unauthorized fixation of*
 24 *and trafficking in sound recordings and music videos of live*
 25 *musical performances), section 2320 (relating to trafficking*
 26 *in goods or services bearing counterfeit marks)” after “sec-*

1 *tions 2314 and 2315 (relating to interstate transportation*
 2 *of stolen property)”.*

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

6 *(a) IN GENERAL.—Section 2318 of title 18, United*
 7 *States Code, is amended—*

8 *(1) in subsection (a), by striking “a motion pic-*
 9 *ture or other audiovisual work,” and inserting “a*
 10 *computer program or documentation or packaging for*
 11 *a computer program, or a copy of a motion picture*
 12 *or other audiovisual work, and whoever, in any of the*
 13 *circumstances described in subsection (c) of this sec-*
 14 *tion, knowingly traffics in counterfeit documentation*
 15 *or packaging for a computer program,”;*

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

18 *(3) in subsection (c)—*

19 *(A) by striking “or” at the end of para-*
 20 *graph (2);*

21 *(B) in paragraph (3)—*

22 *(i) by inserting “a copy of a copy-*
 23 *righted computer program or copyrighted*
 24 *documentation or packaging for a computer*
 25 *program,” after “enclose,”; and*

7 (b) *CONFORMING AMENDMENTS.*—(1) *The section cap-*
8 *tion for section 2318 of title 18, United States Code, is*
9 *amended to read as follows:*

10 “§2318. *Trafficking in counterfeit labels for*
11 *phonorecords, copies of computer pro-*
12 *grams or computer program documenta-*
13 *tion or packaging, and copies of motion*
14 *pictures or other audio visual works, and*
15 *trafficking in counterfeit computer pro-*
16 *gram documentation or packaging”.*

(2) The item relating to section 2318 in the table of sections for chapter 113 of such title is amended to read as follows:

“2318. *Trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging.*”.

20 *SEC. 5. TRAFFICKING IN COUNTERFEIT GOODS OR SERV-*
21 *ICES.*

22 *Section 2320 of title 18, United States Code, is amend-*
23 *ed by adding at the end the following:*

1 “(e) Beginning with the first year after the date of en-
2 actment of this subsection, the Attorney General shall in-
3 clude in the report of the Attorney General to Congress on
4 the business of the Department of Justice prepared pursu-
5 ant to section 522 of title 28, an accounting, on a district
6 by district basis, of the following with respect to all actions
7 taken by the Department of Justice that involve trafficking
8 in counterfeit labels for phonorecords, copies of computer
9 programs or computer program documentation or packag-
10 ing, copies of motion pictures or other audiovisual works
11 (as defined in section 2318 of title 18), criminal infringe-
12 ment of copyrights (as defined in section 2319 of title 18),
13 unauthorized fixation of and trafficking in sound record-
14 ings and music videos of live musical performances (as de-
15 fined in section 2319A of title 18), or trafficking in goods
16 or services bearing counterfeit marks (as defined in section
17 2320 of title 18):

18 “(1) The number of open investigations.

19 “(2) The number of cases referred by the United
20 States Customs Service.

21 “(3) The number of cases referred by other agen-
22 cies or sources.

23 “(4) The number and outcome, including settle-
24 ments, sentences, recoveries, and penalties, of all pros-

1 *ecutions brought under sections 2318, 2319, 2319A,*
 2 *and 2320 of title 18.”.*

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

4 *Section 34(d)(9) of the Act of July 5, 1946 (60 Stat.*
 5 *427, chapter 540; 15 U.S.C. 1116(d)(9)), is amended by*
 6 *striking the first sentence and inserting the following: “The*
 7 *court shall order that service of a copy of the order under*
 8 *this subsection shall be made by a Federal law enforcement*
 9 *officer (such as a United States marshal or an officer or*
 10 *agent of the United States Customs Service, Secret Service,*
 11 *Federal Bureau of Investigation, or Post Office) or may be*
 12 *made by a State or local law enforcement officer, who, upon*
 13 *making service, shall carry out the seizure under the*
 14 *order.”.*

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

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

19 *“(c) In a case involving the use of a counterfeit mark*
 20 *(as defined in section 34(d) (15 U.S.C. 1116(d)) in connec-*
 21 *tion with the sale, offering for sale, or distribution of goods*
 22 *or services, the plaintiff may elect, at any time before final*
 23 *judgment is rendered by the trial court, to recover, instead*
 24 *of actual damages and profits under subsection (a), an*
 25 *award of statutory damages for any such use in connection*

1 *with the sale, offering for sale, or distribution of goods or*
 2 *services in the amount of—*

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

7 “(2) *if the court finds that the use of the counter-*
 8 *feit mark was willful, not more than \$1,000,000 per*
 9 *counterfeit mark per type of goods or services sold, of-*
 10 *fered for sale, or distributed, as the court considers*
 11 *just.”.*

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

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

17 **SEC. 9. DISPOSITION OF MERCHANDISE BEARING AMER-**
 18 **ICAN TRADEMARK.**

19 *Section 526(e) of the Tariff Act of 1930 (19 U.S.C.*
 20 *1526(e)) is amended—*

21 *(1) in the second sentence, by inserting “destroy*
 22 *the merchandise. Alternatively, if the merchandise is*
 23 *not unsafe or a hazard to health, and the Secretary*
 24 *has the consent of the trademark owner, the Secretary*
 25 *may” after “shall, after forfeiture,”;*

1 (2) by inserting “or” at the end of paragraph
 2 (2);
 3 (3) by striking “, or” at the end of paragraph
 4 (3) and inserting a period; and
 5 (4) by striking paragraph (4).

6 **SEC. 10. CIVIL PENALTIES.**

7 Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526)
 8 is amended by adding at the end the following new sub-
 9 section:

10 “(f) *CIVIL PENALTIES.*—(1) Any person who directs,
 11 assists financially or otherwise, or aids and abets the im-
 12 portation of merchandise for sale or public distribution that
 13 is seized under subsection (e) shall be subject to a civil fine.

14 “(2) For the first such seizure, the fine shall be not
 15 more than the value that the merchandise would have had
 16 if it were genuine, according to the manufacturer’s sug-
 17 gested retail price, determined under regulations promul-
 18 gated by the Secretary.

19 “(3) For the second seizure and thereafter, the fine
 20 shall be not more than twice the value that the merchandise
 21 would have had if it were genuine, as determined under
 22 regulations promulgated by the Secretary.

23 “(4) The imposition of a fine under this subsection
 24 shall be within the discretion of the Customs Service, and

1 *shall be in addition to any other civil or criminal penalty*
 2 *or other remedy authorized by law.”.*

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

4 *Section 431(c)(1) of the Tariff Act of 1930 (19 U.S.C.*
 5 *1431(c)(1)) is amended—*

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

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

10 *“(D) The name of the vessel, aircraft, or car-*
 11 *rier.”;*

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

14 *“(E) The seaport or airport of loading.”;*

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

17 *“(F) The seaport or airport of discharge.”; and*

18 *(5) by adding after subparagraph (G) the follow-*
 19 *ing new subparagraph:*

20 *“(H) The trademarks appearing on the goods or*
 21 *packages.”.*

22 **SEC. 12. CUSTOMS ENTRY DOCUMENTATION.**

23 *Section 484(d) of the Tariff Act of 1930 (19 U.S.C.*
 24 *1484(d)) is amended—*

1 (1) by striking “*Entries*” and inserting “(1) *En-*
2 tries”; and

3 (2) by adding at the end the following new para-
4 graph:

5 “(2) *The Secretary, in prescribing regulations govern-*
6 *ing the content of entry documentation, shall require that*
7 *entry documentation contain such information as may be*
8 *necessary to determine whether the imported merchandise*
9 *bears an infringing trademark in violation of section 42*
10 *of the Act of July 5, 1946 (commonly referred to as the*
11 *‘Trademark Act of 1946’; 15 U.S.C. 1124), or any other*
12 *applicable law, including a trademark appearing on the*
13 *goods or packaging.”.*

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

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

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

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

22 (3) by adding at the end the following new para-
23 graph:

24 “(6)(A) a counterfeit label for a phonorecord,
25 copy of a computer program or computer program

1 *documentation or packaging, or copy of a motion pic-*
 2 *ture or other audiovisual work (as defined in section*
 3 *2318 of title 18);*

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

6 *“(C) a fixation of a sound recording or music*
 7 *video of a live musical performance in violation of*
 8 *section 2319A of title 18; or*

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

11 **SEC. 14. REGULATIONS.**

12 *Not later than 6 months after the date of the enactment*
 13 *of this Act, the Secretary of the Treasury shall prescribe*
 14 *such regulations or amendments to existing regulations that*
 15 *may be necessary to carry out the amendments made by*
 16 *sections 9, 10, 11, 12, and 13 of this Act .*

Attest:

Clerk.