

106TH CONGRESS  
1ST SESSION

# H. R. 2100

To amend the Trademark Act of 1946 to prohibit the unauthorized destruction, modification, or alteration of product identification codes, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1999

Mr. GOODLATTE (for himself and Ms. LOFGREN) introduced the following bill;  
which was referred to the Committee on the Judiciary

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## A BILL

To amend the Trademark Act of 1946 to prohibit the unauthorized destruction, modification, or alteration of product identification codes, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Antitampering Act of  
5       1999”.

6       **SEC. 2. PROHIBITION AGAINST UNAUTHORIZED ALTER-**  
7       **ATION OF PRODUCT IDENTIFICATION CODES.**

8       (a) IN GENERAL.—Title VIII of the Act entitled “An  
9       Act to provide for the registration and protection of trade-

1 marks used in commerce, to carry out the provisions of  
 2 certain international conventions, and for other pur-  
 3 poses.”, approved July 5, 1946 (commonly referred to as  
 4 the “Lanham Act” and the “Trademark Act of 1946”)  
 5 is amended by inserting after section 43 (15 U.S.C. 1125)  
 6 the following:

7 “UNAUTHORIZED MODIFICATIONS OF PRODUCT  
 8 IDENTIFICATION CODES

9 “SEC. 43A. (a) DEFINITIONS.—In this section—

10 “(1) the term ‘consumer’—

11 “(A) means—

12 “(i) the ultimate user or purchaser of  
 13 a good; or

14 “(ii) any hotel, restaurant, or other  
 15 provider of services that must remove or  
 16 alter the container, label, or packaging of  
 17 a good in order to make the good available  
 18 to the ultimate user or purchaser; and

19 “(B) does not include any retailer or other  
 20 distributor who acquires a good for resale;

21 “(2) the term ‘good’ means any article, product,  
 22 or commodity that is customarily produced or dis-  
 23 tributed for sale, rental, or licensing in interstate or  
 24 foreign commerce, and any container, packaging,  
 25 label, or component thereof, but does not include  
 26 any article of clothing;

1           “(3) the term ‘manufacturer’ includes the origi-  
2           nal manufacturer of a good and a duly appointed  
3           agent or representative of that manufacturer acting  
4           within the scope of its agency or representation;

5           “(4) the term ‘product identification code’—

6                   “(A) includes any number, letter, symbol,  
7                   marking, date (including an expiration date),  
8                   code, software, or other technology that is af-  
9                   fixed to or embedded in any good, by which the  
10                  manufacturer of the good may trace the good  
11                  back to a particular production lot or batch or  
12                  date of removal, or otherwise identify the date  
13                  of manufacture, the date of expiration, or other  
14                  comparable critical data; and

15                  “(B) does not include copyright manage-  
16                  ment information conveyed in connection with  
17                  copies or phonorecords of a copyrighted work or  
18                  any performance or display of a copyrighted  
19                  work;

20           “(5) the term ‘Universal Product Code’ refers  
21           to the multidigit bar code and number representing  
22           goods in retail applications; and

23           “(6) the term ‘value’ means the face, par, or  
24           market value, whichever is the greatest.

1       “(b) PROHIBITED ACTS.—Except as otherwise au-  
2 thorized by Federal law, it shall be unlawful for any per-  
3 son, other than the consumer or the manufacturer of a  
4 good, knowingly and without authorization of the  
5 manufacturer—

6           “(1) to directly or indirectly alter, conceal, re-  
7 move, obliterate, deface, strip, or peel any product  
8 identification code affixed to or embedded in that  
9 good;

10          “(2) to directly or indirectly affix or embed a  
11 product identification code to or in that good which  
12 is intended by the manufacturer for a different good,  
13 such that the code no longer accurately identifies the  
14 source of the good;

15          “(3) to directly or indirectly affix to or embed  
16 in that good any number, letter, symbol, marking,  
17 date, code, or other technology intended to simulate  
18 a product identification code; or

19          “(4) to import, reimport, export, sell, distribute,  
20 or broker that good, in a case in which the person  
21 knows that the product identification code has been  
22 altered, concealed, removed, obliterated, defaced,  
23 stripped, peeled, affixed, or embedded in violation of  
24 paragraph (1) or (2), or in a case in which the per-  
25 son knows that the good bears an unauthorized

1       number, letter, symbol, marking, date, or other code  
2       in violation of paragraph (3).

3       “(c) APPLICABILITY.—The prohibitions set forth in  
4 subsection (b) shall apply to product identification codes  
5 (or simulated product identification codes in a case to  
6 which subsection (b)(3) applies) affixed to, or embedded  
7 in, any good held for sale or distribution in interstate or  
8 foreign commerce or after shipment therein.

9       “(d) EXCLUSION.—

10       “(1) UPC CODES.—Nothing in this section pro-  
11 hibits a retailer or distributor from affixing a Uni-  
12 versal Product Code or other legitimate pricing or  
13 inventory code or information required by State or  
14 Federal Law if such code or information does not  
15 (or can be removed so as not to) permanently alter,  
16 conceal, remove, obliterate, deface, strip, or peel any  
17 product identification code.

18       “(2) REPACKAGING FOR RESALE.—(A) Nothing  
19 in this section prohibits a distributor from removing  
20 an article, product, or commodity of retail sale from  
21 a shipping container and placing such article, prod-  
22 uct, or commodity in another shipping container for  
23 purpose of resale in a quantity different from the  
24 quantity originally provided by the manufacturer or  
25 from replacing a damaged shipping container, if, ex-

cept as provided in paragraph (1), such article, product, or commodity of retail sale retains its original product identification code, without any obstruction or alteration, and if—

“(i) such distributor is registered with all applicable Federal and State agencies;

“(ii) such distributor repackages the article, product, or commodity in full compliance with all applicable State and Federal laws and regulations; and

“(iii) the act of repackaging does not result in a prohibited act under section 301 of the Federal Food, Drug, and Cosmetic Act or violate any other applicable State or Federal law or regulation.

“(B) As used in this paragraph, the term ‘shipping container’ means—

“(i) a container or wrapping used for the transportation of any article, product, or commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; and

“(ii) containers or wrappings used by retailers to ship or deliver any article, product, or commodity to retail customers, if such con-

1           tainers and wrappings bear no printed matter  
2           pertaining to any particular article, product, or  
3           commodity.

4           “(e) CRIMINAL PENALTIES.—Any person who will-  
5 fully violates this section shall be punished as provided in  
6 section 1365A of title 18.

7           “(f) CIVIL REMEDIES.—

8           “(1) IN GENERAL.—Any person who is injured  
9 by a violation of this section, or threatened with  
10 such injury, may bring a civil action in an appro-  
11 priate United States district court against the al-  
12 leged violator.

13           “(2) INJUNCTIONS AND IMPOUNDING AND DIS-  
14 POSITION OF GOODS.—In any action under para-  
15 graph (1), the court may—

16           “(A) grant 1 or more temporary, prelimi-  
17 nary, or permanent injunctions on such terms  
18 as the court determines to be reasonable to pre-  
19 vent or restrain the violation;

20           “(B) at any time while the action is pend-  
21 ing, order the impounding, on such terms as  
22 the court determines to be reasonable, of any  
23 good that is in the custody or control of the al-  
24 leged violator and that the court has reasonable

1           cause to believe was involved in the violation;  
2           and

3           “(C) as part of a final judgment or  
4           decree—

5                   “(i) order the destruction of any good  
6                   involved in the violation that is in the cus-  
7                   tody or control of the violator or that has  
8                   been impounded under subparagraph (B);  
9                   or

10                   “(ii) if the court determines that any  
11                   good impounded under subparagraph (B)  
12                   is not unsafe or a hazard to health, dispose  
13                   of the good by delivery to such Federal,  
14                   State, or local government agencies as, in  
15                   the opinion of the court, have a need for  
16                   such good, or by gift to such charitable or  
17                   nonprofit institutions as, in the opinion of  
18                   the court, have a need for such good, if  
19                   such disposition would not otherwise be in  
20                   violation of law, and if the manufacturer  
21                   consents to such disposition and is given  
22                   the opportunity to reapply a product iden-  
23                   tification code to the good.

24           “(3) DAMAGES.—



“(A) IN GENERAL.—Subject to subparagraph (B), in any action under paragraph (1), the plaintiff shall be entitled to recover the actual damages suffered by the plaintiff as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages. In establishing the violator’s profits, the plaintiff shall be required to present proof only of the violator’s sales, and the violator shall be required to prove all elements of cost or deduction claimed.

“(B) STATUTORY DAMAGES.—In any action under paragraph (1), the plaintiff may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits described in subparagraph (A), an award of statutory damages for any violation under this section in an amount equal to—

“(i) not less than \$500 and not more than \$100,000, with respect to each type of goods involved in the violation; and

“(ii) if the violation threatens the health and safety of the public, as determined by the court, not less than \$5,000

1                   and not more than \$1,000,000, with re-  
2                   spect to each type of goods involved in the  
3                   violation.

4                   “(4) COSTS AND ATTORNEY’S FEES.—In any  
5                   action under paragraph (1)—

6                   “(A) in addition to any damages recovered  
7                   under paragraph (3), a prevailing plaintiff may  
8                   recover the full costs of the action; and

9                   “(B) the court, in its discretion, may also  
10                  award reasonable attorney fees to the prevailing  
11                  party.

12                  “(5) REPEAT VIOLATIONS.—

13                  “(A) TREBLE DAMAGES.—In any case in  
14                  which a person violates this section within 3  
15                  years after the date on which a final judgment  
16                  was entered against that person for a previous  
17                  violation of this section, the court, in an action  
18                  brought under this subsection, may increase the  
19                  award of damages for the later violation to not  
20                  more than 3 times the amount that would oth-  
21                  erwise be awarded under paragraph (3), as the  
22                  court considers appropriate.

23                  “(B) BURDEN OF PROOF.—A plaintiff that  
24                  seeks damages as described in subparagraph

1 (A) shall bear the burden of proving the exist-  
2 ence of the earlier violation.

3 “(6) LIMITATIONS ON ACTIONS.—No civil ac-  
4 tion may be commenced under this section later than  
5 3 years after the date on which the claimant dis-  
6 covers the violation.

7 “(7) INNOCENT VIOLATIONS.—In any action  
8 under paragraph (1), the court in its discretion may  
9 reduce or remit the total award of damages in any  
10 case in which the violator sustains the burden of  
11 proving, and the court finds, that the violator was  
12 not aware and had no reason to believe that the acts  
13 of the violator constituted a violation.

14 “(g) ENFORCEMENT.—The Attorney General shall  
15 enforce this section.”.

16 (b) CONFORMING AMENDMENT.—The heading for  
17 title VIII of the Act of July 5, 1946, is amended by strik-  
18 ing “AND DILUTION” and inserting “DILUTION,  
19 AND ADULTERATION OF PRODUCT CODES”.

20 **SEC. 3. CRIMINAL PENALTIES.**

21 (a) IN GENERAL.—Chapter 65 of title 18, United  
22 States Code, is amended by inserting after section 1365  
23 the following:

1 **“§ 1365A. Criminal tampering with product identi-**  
2 **fication codes**

3 “(a) CRIMINAL PENALTIES.—Any person who will-  
4 fully violates section 43A of the Act of July 5, 1946 (com-  
5 monly referred to as the ‘Trademark Act of 1946’) shall—

6 “(1) be fined under this title, imprisoned not  
7 more than 1 year, or both;

8 “(2) if the total retail value of the good or  
9 goods involved in the violation is greater than  
10 \$5,000, be fined under this title, imprisoned not  
11 more than 5 years, or both;

12 “(3) if the person acts with reckless disregard  
13 for the risk that the health or safety of the public  
14 would be threatened and under circumstances mani-  
15 festing extreme indifference to such risk, and the  
16 violation threatens the health or safety of the public,  
17 be fined under this title, imprisoned not more than  
18 10 years, or both;

19 “(4) if the person acts with reckless disregard  
20 for the risk that another person will be placed in  
21 danger of death or bodily injury and under cir-  
22 cumstances manifesting extreme indifference to such  
23 risk and—

24 “(A) serious bodily injury to any individual  
25 results, be fined under this title, imprisoned not  
26 more than 20 years, or both; or

1           “(B) death of an individual results, be  
2           fined under this title, imprisoned for any term  
3           of years or for life, or both; and

4           “(5) with respect to any second or subsequent  
5           violation, be subject to twice the maximum term of  
6           imprisonment that would otherwise be imposed  
7           under this subsection, fined under this title, or both.

8           “(b) INJUNCTIONS AND IMPOUNDING, FORFEITURE,  
9           AND DISPOSITION OF GOODS.—

10           “(1) INJUNCTIONS AND IMPOUNDING.—In any  
11           prosecution under this section, upon motion of the  
12           United States, the court may—

13           “(A) grant 1 or more temporary, prelimi-  
14           nary, or permanent injunctions on such terms  
15           as the court determines to be reasonable to pre-  
16           vent or restrain the alleged violation; and

17           “(B) at any time during the proceedings,  
18           order the impounding, on such terms as the  
19           court determines to be reasonable, of any good  
20           that is in the custody or control of the defend-  
21           ant and that the court has reasonable cause to  
22           believe was involved in the violation.

23           “(2) FORFEITURE AND DISPOSITION OF  
24           GOODS.—Upon conviction of any person of a viola-  
25           tion of this section, the court shall—

“(A) order the forfeiture of any good involved in the violation that is in the custody or control of the defendant or that has been impounded under paragraph (1)(B); and

“(B) either—

“(i) order the destruction of each good forfeited under subparagraph (A); or

“(ii) if the court determines that any good forfeited under subparagraph (A) is not unsafe or a hazard to health, dispose of the good by delivery to such Federal, State, or local government agencies as, in the opinion of the court, have a need for such good, or by gift to such charitable or nonprofit institutions as, in the opinion of the court, have a need for such good, if such disposition would not otherwise be in violation of law and if the manufacturer consents to such disposition and is given the opportunity to reapply a product identification code to the good.”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 65 of title 18, United States Code, is amended by inserting after the item relating to section 1365 the following:

“1365A. Criminal tampering with product identification codes.”.

1 **SEC. 4. ATTORNEY GENERAL REPORTING REQUIREMENTS.**

2 Section 2320(f) of title 18, United States Code, is  
3 amended—

4 (1) by inserting “criminal tampering with prod-  
5 uct identification codes under section 1365A,” after  
6 “involve”; and

7 (2) in paragraph (4), by inserting “1365A,”  
8 after “sections”.

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