

LIEUTENANT COMMANDER WITTWER

Mrs. BOXER. Mr. President, I rise to honor the memory of the late LCDR Frank Carl Wittwer. Lieutenant Commander Wittwer, a longtime Hanford resident, perished when his F/A-18C Hornet went down during a training mission near Naval Air Facility El Centro on January 18, 2006. He was 35 years old.

A 1994 graduate of the U.S. Naval Academy, Lieutenant Commander Wittwer was fondly remembered as a friendly and active student who participated in a number of activities such as music and youth ministries at his church. Upon receiving his bachelor of science degree in systems engineering, he began his successful active-duty career as a surface warfare officer aboard the *USS California* and the *USS McFaul*.

In recognition of his considerable talents, Lieutenant Commander Wittwer was assigned to the Hornet Program with VFA-137 in 2001. Subsequently, he received postings at Strike Fighter Wing Pacific Fleet as safety officer and a follow-on assignment with the VFA-97 Warhawks. Throughout his years of service, Lieutenant Commander Wittwer was known as a dedicated and honorable serviceman who embodied the best qualities and ideals of the U.S. Navy.

In his personal life, Lieutenant Commander Wittwer demonstrated a genuine commitment to improving the lives of others. A popular figure in the community and an elder in the First Presbyterian Church in Hanford, he had a passion in working with kindergartners and grade school students. A man of many talents, Lieutenant Commander Wittwer recently completed the executive MBA program at the California State University, Fresno's Craig School of Business.

Lieutenant Commander Wittwer will be remembered by those whose lives he touched as a devoted family man, a loyal friend and an outstanding member of the U.S. Navy. He is survived by his wife Mendi; daughters Erin and Abbie; son Jack; sister Patti; nephew Josh; and his grandfather Hurdis Harris.

STOP COUNTERFEITING IN MANUFACTURED GOODS ACT

Mr. SPECTER. Mr. President, I will take a moment to speak about H.R. 32, the Stop Counterfeiting in Manufactured Goods Act of 2005, sponsored by Representative KNOLLENBERG and 59 House cosponsors. The counterfeiting of goods bearing American held trademarks is an important problem that I am committed to fighting, as reflected by my sponsoring S. 1699, the Senate companion bill to H.R. 32, earlier this year with Senator LEAHY and Senators ALEXANDER, BAYH, BROWNBACH, COBURN, CORNYN, DEWINE, DURBIN, FEINGOLD, FEINSTEIN, HATCH, KYL, LEVIN, REED, STABENOW, and VOINOVICH.

H.R. 32, the Stop Counterfeiting in Manufactured Goods Act of 2005, addresses a problem that has reached epidemic proportions as a result of a loophole in our Criminal Code: the trafficking in counterfeit labels. Criminal law currently prohibits the trafficking in counterfeit trademarks "on or in connection with goods or services." However, it does not prohibit the trafficking in the counterfeit marks themselves. As such, there is nothing in current law to prohibit an individual from selling counterfeit labels bearing otherwise protected trademarks within the United States.

This loophole was exposed by the Tenth Circuit Court of Appeals in *United States v. Giles*, 213 F.3d 1247, 10th Cir. 2000. In this case, the United States prosecuted the defendant for manufacturing and selling counterfeit Dooney & Bourke labels that third parties could later affix to generic purses. Examining title 18, section 2320, of the United States Code, the Tenth Circuit held that persons who sell counterfeit trademarks that are not actually attached to any "goods or services" do not violate the Federal criminal trademark infringement statute. Since the defendant did not attach counterfeit the marks to "goods or services," the court found that the defendant did not run afoul of the criminal statute as a matter of law. Thus, someone caught redhanded with counterfeit trademarks walked free.

H.R. 32 closes this loophole by amending title 18, section 2320 of the United States Code to criminally prohibit the trafficking, or attempt to traffic, in "labels, patches, stickers" and generally any item to which a counterfeit mark has been applied. In so doing, H.R. 32 provides U.S. Department of Justice prosecutors with the means not only to prosecute individuals trafficking in counterfeit goods or services but also individuals trafficking in labels, patches, and the like that are later applied to goods.

Congress must act expeditiously to protect U.S. held trademarks to the fullest extent of the law. The recent 10-count indictment of 4 Massachusetts residents of conspiracy to traffic in approximately \$1.4 million of counterfeit luxury goods in the case of *U.S. v. Luong et al.*, 2005 D. Mass., underscores the need for this legislation. According to the indictment, law enforcement officers raided self-storage units earlier this year and found the units to hold approximately 12,231 counterfeit handbags; 7,651 counterfeit wallets; more than 17,000 generic handbags and wallets; and enough counterfeit labels and medallions to turn more than 50,000 generic handbags and wallets into counterfeits. Although the U.S. Attorney's Office was able to pursue charges of trafficking and attempting to traffic in counterfeit handbags and wallets, they could not able to bring charges for trafficking and attempting to traffic in the more than 50,000 counterfeit labels and medallions. As such, these defendants

will escape prosecution that would have otherwise been illegal if they had only been attached to an otherwise generic bag. This simply does not make sense and had the Stop Counterfeiting in Manufactured Goods Act of 2005 been in effect at the time of indictment, U.S. prosecutors would have been able to bring charges against the defendants for trafficking and attempting to traffic in not only counterfeit goods but also counterfeit labels.

As Assistant Attorney General Alice Fisher said, "Those who manufacture and sell counterfeit goods steal business from honest merchants, confuse or defraud honest consumers, and illegally profit on the backs of honest American workers and entrepreneurs." This point is underscored by the Bureau of Customs and Border Protection estimate that trafficking in counterfeit goods costs the United States approximately \$200-\$250 million annually. With each passing year, the United States loses millions of dollars in tax revenues to the sale of counterfeit goods. Further, each counterfeit item that is manufactured overseas and distributed in the United States costs American workers tens of thousands of jobs. With counterfeit goods making up a growing 5 to 7 percent of world trade, this is a problem that we can no longer ignore.

To be sure, counterfeiting is not limited to the popular designer goods that we have all seen sold on corners of just about every major metropolitan city in the United States. Counterfeiting has a devastating impact on a broad range of industries. In fact, for almost every legitimate product manufactured and sold within the United States, there is a parallel counterfeit product being sold for no more than half the price. These counterfeit products range from children's toys to clothing to Christmas tree lights. More frightening are the thousands of counterfeit automobile parts, batteries, and electrical equipment that are being manufactured and placed into the stream of commerce with each passing day. I am told that the level of sophistication in counterfeiting has reached the point that you can no longer distinguish between the real and the counterfeit good or label with the naked eye. However, just because these products look the same does not mean that they have the same quality characteristics. The counterfeit products are not subject to the same quality controls of legitimate products, resulting in items that are lower in quality and likely to fall apart. In fact, counterfeit products could potentially kill unsuspecting American consumers.

In addition to closing the "counterfeit label loophole," the Stop Counterfeiting in Manufactured Goods Act strengthens the Criminal Code and provides heightened penalties for those trafficking in counterfeit marks. Current law does not provide for the seizure and forfeiture of counterfeit trademarks, whether they are attached to

goods or not. Therefore, many times such counterfeit goods are seized one day, only to be returned and sold to an unsuspecting public. To ensure that individuals engaging in the practice of trafficking in counterfeit marks cannot reopen their doors, H.R. 32 establishes procedures for the mandatory seizure, forfeiture, and destruction of counterfeit marks prior to a conviction. Further, it provides for procedures for the mandatory forfeiture and destruction of property derived from or used to engage in the trafficking of counterfeit marks.

When this legislation was sent over to the Senate from the House, concerns were raised to Senator LEAHY and myself about the language in Section 2(b)(1)(B) of this bill pertaining to the forfeiture authority of the U.S. Department of Justice. In focusing our attention to this section, we discussed the scope of the facilitation language, which parallels the drug and money laundering forfeiture language in 21 U.S.C. 853 and 18 U.S.C. 982, respectively, and how it might relate to Internet marketplace companies, search engines, and ISPs. Specifically, we were aware of concerns regarding the potential misapplication of the facilitation language in section 2(b)(1)(B) to pursue forfeiture and seizure proceedings against responsible Internet marketplace companies that serve as third party intermediaries to online transactions.

Mr. LEAHY. Section 2(b)(1)(B) authorizes U.S. attorneys to pursue civil in rem forfeiture proceedings against “any property used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a).” The intent of this language is to provide attorneys and prosecutors with the authority to bring a civil forfeiture action against the property of bad actors who are facilitating trafficking or attempts to traffic in counterfeit marks. The forfeiture authority in section 2(b)(1)(B) cannot be used to pursue forfeiture and seizure proceedings against the computer equipment, Web site, or network of responsible Internet marketplace companies, which serve solely as a third-party to transactions and do not tailor their services or their facilities to the furtherance of trafficking or attempts to traffic in counterfeit marks. However, these Internet marketplace companies must make demonstrable good faith efforts to combat the use of their systems and services to traffic in counterfeit marks. Companies must establish and implement procedures to take down postings that contain or offer to sell goods, services, labels, and the like in violation of this act upon being made aware of the illegal nature of these items or services.

It is the irresponsible culprits that must be held accountable. Those who profit from another’s innovation have proved their creativity only at escaping responsibility for their actions. As legislators, it is important that we pro-

vide law enforcement with the tools needed to capture these thieves.

Senator SPECTER, it is also my understanding that the U.S. Sentencing Commission recently promulgated new Federal sentencing guidelines to account for the changes in how intellectual property crimes are committed. Could you clarify for the record why we have authorized the U.S. Sentencing Commission to further amend the Federal sentencing guidelines and policy statements for crimes committed in violation of title 18, section 2318 or 2320, of the United States Code?

Mr. SPECTER. As Senator LEAHY is aware, periodically the Sentencing Commission has sought to update the Federal sentencing guidelines upon the periodic directive of Congress to reflect and account for changes in the manner in which intellectual property offenses are committed. The recent amendments to which you refer were promulgated by the Sentencing Commission pursuant to the authorization in the Family Entertainment and Copyright Act of 2005, also known as FECA. These amendments to the Federal sentencing guidelines, which took effect on October 24, 2005, address changes in penalties and definitions for intellectual property rights crimes, particularly those involving copyrighted prerelease works and issues surrounding “uploading.” For example, these guidelines provide for a 25 percent increase in sentences for offenses involving prerelease works. In addition, the Commission revised its definition of “uploading” to ensure that the guidelines are keeping up with technological advances in this area.

I would like to make it clear for the record that the directive to the Sentencing Commission in section 3 of H.R. 32 is not meant as disapproval of the Commission’s recent actions in response to FECA. Rather, section 3 covers other intellectual property rights crimes that Congress believes it is time for the Commission to revisit. Specifically, section 3 directs the Commission to review the guidelines, and particularly the definition of “infringement amount,” to ensure that offenses involving low-cost items like labels, patches, medallions, or packaging that are used to make counterfeit goods that are much more expensive are properly punished. It also directs the Commission to ensure that the penalty provisions for offenses involving all counterfeit goods or services or devices used to facilitate counterfeiting are properly addressed by the guidelines. As it did in response to the No Electronic Theft Act of 1997 and FECA, I am confident that the Commission will ensure that the Federal sentencing guidelines provide adequate punishment and deterrence for these very serious offenses, and I look forward to the Commission’s response to this directive.

Mr. LEAHY. Senator SPECTER, thank you for that clarification. As you are aware, there has been overwhelming

support for this legislation. It has been very heartening to see such overwhelming support for this important bill. Counterfeiting is a threat to America. It wreaks real harm on our economy, our workers, and our consumers. This bill is a tough bill that will give law enforcement improved tools to fight this form of theft. The bill is short and straightforward, but its impact should be profound and far-reaching.

Mr. SPECTER. At this point, I would like to take this opportunity to thank like to thank Representative JIM SEN-SEN BRENNE, Chairman of the House Judiciary Committee, and Representative JOE KNOLLENBERG for their leadership in the House with regard to H.R. 32. In January of 2005, Representative KNOLLENBERG introduced H.R. 32 in the House. When the bill was in Committee, he fostered negotiations between the Department of Justice, the U.S. Chamber of Commerce, and the International Trademark Association to ensure that it passed the House. I would also like to thank my colleague Senator LEAHY, ranking member of the Senate Judiciary Committee, and Senators ALEXANDER, BAYH, BROWNBACK, COBURN, CORNIN, DEWINE, DURBIN, FEINGOLD, FEINSTEIN, HATCH, KYL, LEVIN, REED, STABENOW, and VOINOVICH for their cosponsorship of S. 1699, the companion legislation to H.R. 32. It is through the hard work of all of these Members that we were able to achieve truly bipartisan support for language that will ensure the protection of American-held trademarks.

Mr. LEAHY. Some of our most important legislation is produced not only when we reach across the aisle in the name of bipartisanship but when we work across chambers and reach true consensus. I would also like to thank Senators ALEXANDER, BAYH, BROWNBACK, COBURN, CORNIN, DEWINE, DURBIN, FEINGOLD, FEINSTEIN, HATCH, KYL, LEVIN, REED, STABENOW and VOINOVICH for their cosponsorship of the Senate companion legislation. Counterfeiting is a serious problem that does not lend itself to a quick and easy solution. This legislation is an important step toward fighting counterfeiting. I hope we can build on the success of this law.

PRINCIPLES OF TELECOM REFORM

Mr. NELSON of Nebraska. Mr. President, when the last major telecommunications bill was passed in 1996, fewer than half of American households owned a computer, only one out of four owned a cell phone or had Internet access, almost no one had residential broadband Internet access, and Internet commerce was in its infancy. Regulations were based on the assumption that telephone networks only offered voice service, cable television networks only offered video service, and the Internet only offered data service. Today, however, many cable systems offer Internet access and phone service,