

ASSEMBLY, No. 1589

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1996

By Assemblyman BAGGER

1 AN ACT concerning criminal offenses involving counterfeit marks and
2 supplementing Title 2C of the New Jersey Statutes.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. a. This act shall be known and may be cited as the "New Jersey
8 Trademark Counterfeiting Act."

9 b. As used in this act:

10 (1) "Counterfeit mark" means:

11 (a) any unauthorized reproduction or copy of intellectual property;

12 or

13 (b) intellectual property affixed to any item knowingly sold, offered
14 for sale, manufactured, or distributed, or identifying services offered
15 or rendered, without the authority of the owner of the intellectual
16 property.

17 (2) "Intellectual property" means any trademark, service mark,
18 trade name, label, term, device, design, or word adopted or used by a
19 person to identify such person's goods or services.

20 (3) "Retail value" means the counterfeiter's regular selling price for
21 the item or service bearing or identified by the counterfeit mark. In
22 the case of items bearing a counterfeit mark which are components of
23 a finished product, the retail value shall be the counterfeiter's regular
24 selling price of the finished product on or in which the component
25 would be utilized.

26 (4) "Service mark" means any word, name, symbol, or device, or
27 any combination thereof, used by a person to identify and distinguish
28 the services of one person, including a unique service, from the
29 services of others, and to indicate the source of the services, even if
30 that source is unknown. Service mark includes titles, character names
31 used by a person, and other distinctive features of radio or television
32 programs, notwithstanding that they, or the programs, advertise the
33 goods of the sponsor.

34 (5) "Trademark" means any word, name, symbol, or device, or any
35 combination thereof, used by a person to identify and distinguish the
36 goods of the person, including a unique product, from those
37 manufactured and sold by others, and to indicate the source of the

1 goods, even if that source is unknown.

2 (6) "Trade name" means any name used by a person to identify a
3 business or vocation of the person.

4 c. A person commits the offense of counterfeiting who purposely
5 manufactures, uses, displays, advertises, distributes, offers for sale,
6 sells, or possesses with intent to sell or distribute any item, or services,
7 bearing, or identified by, a counterfeit mark.

8 A person who has in his possession or under his control more than
9 25 items bearing a counterfeit mark shall be presumed to have violated
10 this section.

11 d. (1) An offense set forth in this act shall be punishable as a crime
12 of the fourth degree if:

13 the offense involves fewer than 100 items bearing a counterfeit
14 mark;

15 the offense involves a total retail value of less than \$1,000.00 for
16 all items bearing, or services identified by, a counterfeit mark; or

17 the offense involves a first conviction under this act.

18 (2) An offense set forth in this act shall be punishable as a crime of
19 the third degree if:

20 the offense involves more than 100 but fewer than 1,000 items
21 bearing a counterfeit mark ;

22 the offense involves a total retail value of more than \$1,000.00 but
23 less than \$15,000.00 of all items bearing, or services identified by , a
24 counterfeit mark; or

25 the offense involves a second conviction under this act.

26 (3) An offense set forth in this act shall be punishable as a crime
27 of the second degree if:

28 the offense involves 1000 or more items bearing a counterfeit mark:

29 the offense involves a total retail value of \$75,000.00 or more of all
30 items bearing, or services identified by a counterfeit mark;

31 the offense involves a third or subsequent conviction under this act.

32 In addition, any person convicted under this act , notwithstanding
33 the provisions of N.J.S.2C:43-3, shall be fined by the court an amount
34 up to threefold the retail value of the items or services involved,
35 providing that the fine imposed shall not exceed the following
36 amounts; for a crime of the fourth degree, \$100,000.00;for a crime of
37 the third degree, \$250,000.00; and for a crime of the second degree,
38 \$500,000.00.

39 e. All items bearing a counterfeit mark, and all personal property,
40 including but not limited to, any items, objects, tools, machines,
41 equipment, instrumentalities or vehicles of any kind, employed or used
42 in connection with a violation of this act, shall be subject to forfeiture
43 in accordance with the procedures set forth in chapter 64 of Title 2C
44 of the New Jersey Statutes.

45 f. For purposes of this act:

46 (1) the quantity or retail value of items or services shall include the

1 aggregate quantity or retail value of all items bearing, or services
2 identified by, every counterfeit mark the defendant manufactures, uses,
3 displays, advertises, distributes, offers for sale, sells or possesses;

4 (2) any State or federal certificate of registration of any intellectual
5 property shall be prima facie evidence of the facts stated therein.

6 g. Conviction for an offense under this act does not preclude the
7 defendant's liability for the civil remedy available pursuant to section
8 2 of P.L.1987, c.454 (C.56:3-13.16).

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10 2. This act shall take effect immediately .

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STATEMENT

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15 This bill establishes a specific criminal offense of counterfeiting.
16 The bill makes it a crime ranging from the fourth to second degree to
17 willingly manufacture, use, display, advertise, distribute, offer for sale,
18 sell, or possess with intent to sell or distribute any item, or services,
19 bearing , or identified by, a counterfeit mark. The bill grades the
20 offense depending on one of three possible factors: the number of
21 items bearing the counterfeit mark; the total retail value of the items
22 involved or whether the offense is a first, second or third or
23 subsequent conviction. The bill provides for enhanced fines for
24 persons convicted depending on the retail value of the items involved.

25 The bill provides that all items bearing a counterfeit mark and all
26 items used in connection with the violation shall be subject to
27 forfeiture as provided in the criminal code.

28 Conviction under this bill for a criminal offense shall not preclude
29 the defendant's potential liability for civil damages under
30 N.J.S.A. 56:3-13.16.

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35 Establishes the criminal offense of trademark counterfeiting.