

[First Reprint]
ASSEMBLY, No. 1589

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1996

By Assemblymen BAGGER and COHEN

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

3

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" means¹[:

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] a spurious mark
20 that is identical with or substantially indistinguishable from a genuine
21 mark that is registered on the principal register in the United States
22 Patent and Trademark Office or registered in the New Jersey Secretary
23 of State's office; and that is used or is intended to be used on, or in
24 conjunction with, goods or services for which the genuine mark is
25 registered and in use¹.

26 ¹~~[(3)]~~ (2)¹ "Retail value" means the counterfeiter's regular selling
27 price for the item or service bearing or identified by the counterfeit
28 mark. In the case of items bearing a counterfeit mark which are
29 components of a finished product, the retail value shall be the
30 counterfeiter's regular selling price of the finished product on or in
31 which the component would be utilized.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted May 30, 1996.

1 ¹[(4) "Service mark" means any word, name, symbol, or device, or
2 any combination thereof, used by a person to identify and distinguish
3 the services of one person, including a unique service, from the
4 services of others, and to indicate the source of the services, even if
5 that source is unknown. Service mark includes titles, character names
6 used by a person, and other distinctive features of radio or television
7 programs, notwithstanding that they, or the programs, advertise the
8 goods of the sponsor.]¹

9 ¹[(5) "Trademark" means any word, name, symbol, or device, or
10 any combination thereof, used by a person to identify and distinguish
11 the goods of the person, including a unique product, from those
12 manufactured and sold by others, and to indicate the source of the
13 goods, even if that source is unknown.]¹

14 ¹[(6) "Trade name" means any name used by a person to identify
15 a business or vocation of the person.]¹

16 c. A person commits the offense of counterfeiting who
17 ¹[purposely], with the intent to deceive or defraud some other person,
18 knowingly¹ manufactures, uses, displays, advertises, distributes, offers
19 for sale, sells, or possesses with intent to sell or distribute ¹within, or
20 in conjunction with commercial activities within New Jersey, ¹ any
21 item, or services, bearing, or identified by, a counterfeit mark.

22 A person who has in his possession or under his control more than
23 25 items bearing a counterfeit mark shall be presumed to have violated
24 this section.

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

27 the offense involves fewer than 100 items bearing a counterfeit
28 mark;

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

31 the offense involves a first conviction under this act.

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

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

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

39 the offense involves a second conviction under this act.

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

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

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

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

46 In addition, any person convicted under this act , notwithstanding

1 the provisions of N.J.S.2C:43-3, shall be fined by the court an amount
2 up to threefold the retail value of the items or services involved,
3 providing that the fine imposed shall not exceed the following
4 amounts; for a crime of the fourth degree, \$100,000.00; for a crime of
5 the third degree, \$250,000.00; and for a crime of the second degree,
6 \$500,000.00.

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

13 f. For purposes of this act:

14 (1) the quantity or retail value of items or services shall include the
15 aggregate quantity or retail value of all items bearing, or services
16 identified by, every counterfeit mark the defendant manufactures, uses,
17 displays, advertises, distributes, offers for sale, sells or possesses;

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

20 g. Conviction for an offense under this act does not preclude the
21 defendant's liability for the civil remedy available pursuant to section
22 2 of P.L.1987, c.454 (C.56:3-13.16).

23

24 2. This act shall take effect immediately .

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29 Establishes the criminal offense of trademark counterfeiting.