

[First Reprint]
SENATE, No. 1651

STATE OF NEW JERSEY

INTRODUCED OCTOBER 28, 1996

By Senators BENNETT and LYNCH

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 a spurious mark that is identical with
11 or substantially indistinguishable from a genuine mark that is registered
12 on the principal register in the United States Patent and Trademark
13 Office or registered in the New Jersey Secretary of State's office; and
14 that is used or is intended to be used on, or in conjunction with,
15 goods or services for which the genuine mark is registered and in use.

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

22 c. A person commits the offense of counterfeiting who, with the
23 intent to deceive or defraud some other person, knowingly
24 manufactures, uses, displays, advertises, distributes, offers for sale,
25 sells, or possesses with intent to sell or distribute within, or in
26 conjunction with commercial activities within New Jersey, any item,
27 or services, bearing, or identified by, a counterfeit mark.

28 A person who has in his possession or under his control more than
29 25 items bearing a counterfeit mark shall be presumed to have violated
30 this section.

31 d. (1) An offense set forth in this act shall be punishable as a crime

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 Senate SJU committee amendments adopted December 16, 1996.

1 of the fourth degree if:

2 the offense involves fewer than 100 items bearing a counterfeit
3 mark;

4 the offense involves a total retail value of less than \$1,000.00 for
5 all items bearing, or services identified by, a counterfeit mark; or
6 the offense involves a first conviction under this act.

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

9 the offense involves ¹[more than 100] 100 or more¹ but fewer than
10 1,000 items bearing a counterfeit mark;

11 the offense involves a total retail value of ¹[more than \$1,000.00]
12 \$1,000.00 or more¹ but less than \$15,000.00 of all items bearing, or
13 services identified by , a counterfeit mark; or

14 the offense involves a second conviction under this act.

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

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

18 the offense involves a total retail value of ¹[\$75,000.00]
19 \$15,000.00¹ or more of all items bearing, or services identified by a
20 counterfeit mark;

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

22 In addition, any person convicted under this act, notwithstanding
23 the provisions of N.J.S.2C:43-3, shall be fined by the court an amount
24 up to threefold the retail value of the items or services involved,
25 providing that the fine imposed shall not exceed the following
26 amounts; for a crime of the fourth degree, \$100,000.00; for a crime of
27 the third degree, \$250,000.00; and for a crime of the second degree,
28 \$500,000.00.

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

35 f. For purposes of this act:

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

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

42 g. Conviction for an offense under this act does not preclude the
43 defendant's liability for the civil remedy available pursuant to section
44 2 of P.L.1987, c.454 (C.56:3-13.16).

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46 2. This act shall take effect immediately.

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3 Establishes the criminal offense of trademark counterfeiting.