

In the Senate of the United States,

February 15, 2006.

Resolved, That the bill from the House of Representatives (H.R. 32) entitled “An Act to amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 **SECTION 1. TRAFFICKING IN COUNTERFEIT MARKS.**

2 (a) *SHORT TITLE; FINDINGS.*—

3 (1) *SHORT TITLE.*—*This section may be cited as*
4 *the “Stop Counterfeiting in Manufactured Goods*
5 *Act”.*

1 (2) *FINDINGS.—The Congress finds that—*

2 (A) *the United States economy is losing*
3 *millions of dollars in tax revenue and tens of*
4 *thousands of jobs because of the manufacture,*
5 *distribution, and sale of counterfeit goods;*

6 (B) *the Bureau of Customs and Border Pro-*
7 *tection estimates that counterfeiting costs the*
8 *United States \$200 billion annually;*

9 (C) *counterfeit automobile parts, including*
10 *brake pads, cost the auto industry alone billions*
11 *of dollars in lost sales each year;*

12 (D) *counterfeit products have invaded nu-*
13 *merous industries, including those producing*
14 *auto parts, electrical appliances, medicines,*
15 *tools, toys, office equipment, clothing, and many*
16 *other products;*

17 (E) *ties have been established between coun-*
18 *terfeiting and terrorist organizations that use the*
19 *sale of counterfeit goods to raise and launder*
20 *money;*

21 (F) *ongoing counterfeiting of manufactured*
22 *goods poses a widespread threat to public health*
23 *and safety; and*

24 (G) *strong domestic criminal remedies*
25 *against counterfeiting will permit the United*

1 *States to seek stronger anticounterfeiting provi-*
2 *sions in bilateral and international agreements*
3 *with trading partners.*

4 **(b) TRAFFICKING IN COUNTERFEIT MARKS.**—*Section*
5 *2320 of title 18, United States Code, is amended as follows:*

6 (1) *Subsection (a) is amended by inserting after*
7 *“such goods or services” the following: “, or inten-*
8 *tionally traffics or attempts to traffic in labels, patch-*
9 *es, stickers, wrappers, badges, emblems, medallions,*
10 *charms, boxes, containers, cans, cases, hangtags, docu-*
11 *mentation, or packaging of any type or nature, know-*
12 *ing that a counterfeit mark has been applied thereto,*
13 *the use of which is likely to cause confusion, to cause*
14 *mistake, or to deceive,”.*

15 (2) *Subsection (b) is amended to read as follows:*

16 “(b)(1) *The following property shall be subject to for-*
17 *feiture to the United States and no property right shall*
18 *exist in such property:*

19 “(A) *Any article bearing or consisting of a coun-*
20 *terfeit mark used in committing a violation of sub-*
21 *section (a).*

22 “(B) *Any property used, in any manner or part,*
23 *to commit or to facilitate the commission of a viola-*
24 *tion of subsection (a).*

1 “(2) *The provisions of chapter 46 of this title relating*
2 *to civil forfeitures, including section 983 of this title, shall*
3 *extend to any seizure or civil forfeiture under this section.*
4 *At the conclusion of the forfeiture proceedings, the court,*
5 *unless otherwise requested by an agency of the United*
6 *States, shall order that any forfeited article bearing or con-*
7 *sisting of a counterfeit mark be destroyed or otherwise dis-*
8 *posed of according to law.*

9 “(3)(A) *The court, in imposing sentence on a person*
10 *convicted of an offense under this section, shall order, in*
11 *addition to any other sentence imposed, that the person for-*
12 *feit to the United States—*

13 “(i) *any property constituting or derived from*
14 *any proceeds the person obtained, directly or indi-*
15 *rectly, as the result of the offense;*

16 “(ii) *any of the person’s property used, or in-*
17 *tended to be used, in any manner or part, to commit,*
18 *facilitate, aid, or abet the commission of the offense;*
19 *and*

20 “(iii) *any article that bears or consists of a*
21 *counterfeit mark used in committing the offense.*

22 “(B) *The forfeiture of property under subparagraph*
23 *(A), including any seizure and disposition of the property*
24 *and any related judicial or administrative proceeding, shall*
25 *be governed by the procedures set forth in section 413 of*

1 *the Comprehensive Drug Abuse Prevention and Control Act*
2 *of 1970 (21 U.S.C. 853), other than subsection (d) of that*
3 *section. Notwithstanding section 413(h) of that Act, at the*
4 *conclusion of the forfeiture proceedings, the court shall order*
5 *that any forfeited article or component of an article bearing*
6 *or consisting of a counterfeit mark be destroyed.*

7 “(4) When a person is convicted of an offense under
8 this section, the court, pursuant to sections 3556, 3663A,
9 and 3664, shall order the person to pay restitution to the
10 owner of the mark and any other victim of the offense as
11 an offense against property referred to in section
12 3663A(c)(1)(A)(i).

13 “(5) The term ‘victim’, as used in paragraph (4), has
14 the meaning given that term in section 3663A(a)(2).”.

15 (3) Subsection (e)(1) is amended—

16 (A) by striking subparagraph (A) and in-
17 sserting the following:

18 “(A) a spurious mark—

19 “(i) that is used in connection with
20 trafficking in any goods, services, labels,
21 patches, stickers, wrappers, badges, em-
22 blems, medallions, charms, boxes, con-
23 tainers, cans, cases, hangtags, documenta-
24 tion, or packaging of any type or nature;

1 “(ii) that is identical with, or substan-
2 tially indistinguishable from, a mark reg-
3 istered on the principal register in the
4 United States Patent and Trademark Office
5 and in use, whether or not the defendant
6 knew such mark was so registered;

7 “(iii) that is applied to or used in con-
8 nection with the goods or services for which
9 the mark is registered with the United
10 States Patent and Trademark Office, or is
11 applied to or consists of a label, patch,
12 sticker, wrapper, badge, emblem, medallion,
13 charm, box, container, can, case, hangtag,
14 documentation, or packaging of any type or
15 nature that is designed, marketed, or other-
16 wise intended to be used on or in connection
17 with the goods or services for which the
18 mark is registered in the United States Pat-
19 ent and Trademark Office; and

20 “(iv) the use of which is likely to cause
21 confusion, to cause mistake, or to deceive;
22 or”;

23 (B) by amending the matter following sub-
24 paragraph (B) to read as follows:

1 *“but such term does not include any mark or designa-*
2 *tion used in connection with goods or services, or a*
3 *mark or designation applied to labels, patches, stick-*
4 *ers, wrappers, badges, emblems, medallions, charms,*
5 *boxes, containers, cans, cases, hangtags, documenta-*
6 *tion, or packaging of any type or nature used in con-*
7 *nection with such goods or services, of which the man-*
8 *ufacturer or producer was, at the time of the manu-*
9 *facture or production in question, authorized to use*
10 *the mark or designation for the type of goods or serv-*
11 *ices so manufactured or produced, by the holder of the*
12 *right to use such mark or designation.”.*

13 *(4) Section 2320 is further amended—*

14 *(A) by redesignating subsection (f) as sub-*
15 *section (g); and*

16 *(B) by inserting after subsection (e) the fol-*
17 *lowing:*

18 *“(f) Nothing in this section shall entitle the United*
19 *States to bring a criminal cause of action under this section*
20 *for the repackaging of genuine goods or services not in-*
21 *tended to deceive or confuse.”.*

22 *(c) SENTENCING GUIDELINES.—*

23 *(1) REVIEW AND AMENDMENT.—Not later than*
24 *180 days after the date of enactment of this Act, the*
25 *United States Sentencing Commission, pursuant to*

1 *its authority under section 994 of title 28, United*
2 *States Code, and in accordance with this subsection,*
3 *shall review and, if appropriate, amend the Federal*
4 *sentencing guidelines and policy statements applica-*
5 *ble to persons convicted of any offense under section*
6 *2318 or 2320 of title 18, United States Code.*

7 (2) *AUTHORIZATION.—The United States Sen-*
8 *tencing Commission may amend the Federal sen-*
9 *tencing guidelines in accordance with the procedures*
10 *set forth in section 21(a) of the Sentencing Act of*
11 *1987 (28 U.S.C. 994 note) as though the authority*
12 *under that section had not expired.*

13 (3) *RESPONSIBILITIES OF UNITED STATES SEN-*
14 *TENCING COMMISSION.—In carrying out this sub-*
15 *section, the United States Sentencing Commission*
16 *shall determine whether the definition of “infringe-*
17 *ment amount” set forth in application note 2 of sec-*
18 *tion 2B5.3 of the Federal sentencing guidelines is ade-*
19 *quate to address situations in which the defendant*
20 *has been convicted of one of the offenses listed in*
21 *paragraph (1) and the item in which the defendant*
22 *trafficked was not an infringing item but rather was*
23 *intended to facilitate infringement, such as an anti-*
24 *circumvention device, or the item in which the defend-*
25 *ant trafficked was infringing and also was intended*

1 to facilitate infringement in another good or service,
2 such as a counterfeit label, documentation, or pack-
3 aging, taking into account cases such as *U.S. v.*
4 *Sung*, 87 F.3d 194 (7th Cir. 1996).

5 **SEC. 2. TRAFFICKING DEFINED.**

6 (a) *SHORT TITLE.*—This section may be cited as the
7 “*Protecting American Goods and Services Act of 2005*”.

8 (b) *COUNTERFEIT GOODS OR SERVICES.*—Section
9 2320(e) of title 18, United States Code, is amended—

10 (1) by striking paragraph (2) and inserting the
11 following:

12 “(2) the term ‘traffic’ means to transport, trans-
13 fer, or otherwise dispose of, to another, for purposes
14 of commercial advantage or private financial gain, or
15 to make, import, export, obtain control of, or possess,
16 with intent to so transport, transfer, or otherwise dis-
17 pose of;”;

18 (2) by redesignating paragraph (3) as para-
19 graph (4); and

20 (3) by inserting after paragraph (2) the fol-
21 lowing:

22 “(3) the term ‘financial gain’ includes the re-
23 ceipt, or expected receipt, of anything of value; and”.

24 (c) *CONFORMING AMENDMENTS.*—

1 (1) *SOUND RECORDINGS AND MUSIC VIDEOS OF*
2 *LIVE MUSICAL PERFORMANCES.*—Section 2319A(e) of
3 *title 18, United States Code, is amended by striking*
4 *paragraph (2) and inserting the following:*

5 “(2) *the term ‘traffic’ has the same meaning as*
6 *in section 2320(e) of this title.*”.

7 (2) *COUNTERFEIT LABELS FOR PHONORECORDS,*
8 *COMPUTER PROGRAMS, ETC.*—Section 2318(b) of title
9 *18, United States Code, is amended by striking para-*
10 *graph (2) and inserting the following:*

11 “(2) *the term ‘traffic’ has the same meaning as*
12 *in section 2320(e) of this title;*”.

13 (3) *ANTI-BOOTLEGGING.*—Section 1101 of title
14 *17, United States Code, is amended by striking sub-*
15 *section (b) and inserting the following:*

16 “(b) *DEFINITION.*—*In this section, the term ‘traffic’*
17 *has the same meaning as in section 2320(e) of title 18.*”.

Attest:

Secretary.

109TH CONGRESS
2^D SESSION

H. R. 32

AMENDMENT