

109TH CONGRESS  
1ST SESSION

# H. R. 32

To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mr. KNOLLENBERG (for himself, Mr. GREEN of Wisconsin, Mr. EHLERS, Mr. SIMMONS, Mr. GILLMOR, Mr. SMITH of Texas, Mr. COBLE, Mr. McCOTTER, Mr. CAMP, Mr. UPTON, Mr. ROGERS of Michigan, Mr. WEXLER, Mr. LEVIN, Mr. ROHRABACHER, Mr. GOODLATTE, Mr. WELDON of Pennsylvania, Mrs. MILLER of Michigan, Mr. HOEKSTRA, Mr. CHABOT, Ms. KAPTUR, Mr. MCGOVERN, and Mr. TERRY) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

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

6 (b) FINDINGS.—The Congress finds that—

7 (1) the United States economy is losing millions  
8 of dollars in tax revenue and tens of thousands of

1 jobs because of the manufacture, distribution, and  
2 sale of counterfeit goods;

3 (2) the U.S. Customs Service and Border Pro-  
4 tection estimates that counterfeiting costs the U.S.  
5 \$200 billion annually;

6 (3) counterfeit automobile parts, including  
7 brake pads, cost the auto industry alone billions of  
8 dollars in lost sales each year;

9 (4) counterfeit products have invaded numerous  
10 industries including those producing auto parts, elec-  
11 trical appliances, medicines, tools, toys, office equip-  
12 ment, clothing, and many other products;

13 (5) ties have been established between counter-  
14 feiting and terrorist organizations that use the sale  
15 of counterfeit goods to raise and launder money;

16 (6) ongoing counterfeiting of manufactured  
17 goods poses a widespread threat to public health and  
18 safety; and

19 (7) strong domestic criminal remedies against  
20 counterfeiting will permit the United States to seek  
21 stronger anticounterfeiting provisions in bilateral  
22 and international agreements with trading partners.

23 **SEC. 2. TRAFFICKING IN COUNTERFEIT MARKS.**

24 Section 2320 of title 18, United States Code, is  
25 amended as follows:

1           (1) Subsection (a) is amended by inserting after  
2           “such goods or services” the following: “, or inten-  
3           tionally traffics or attempts to traffic in labels,  
4           patches, stickers, wrappers, badges, emblems, medal-  
5           lions, charms, boxes, containers, cans, cases,  
6           hangtags, documentation, or packaging of any type  
7           or nature to which a counterfeit mark is knowingly  
8           applied,”.

9           (2) Subsection (b) is amended to read as fol-  
10          lows:

11          “(b)(1) Upon a determination by a preponderance of  
12          the evidence that any article in the possession of a defend-  
13          ant in a prosecution under this section bears or consists  
14          of a counterfeit mark, the court shall order the forfeiture  
15          and destruction of such article, regardless of whether the  
16          defendant is convicted of an offense under this section.

17          “(2) The court, in imposing a sentence upon a person  
18          convicted of a violation of this section, or upon a person  
19          who pleads guilty or nolo contendere to a violation of this  
20          section, shall order, in addition to any other sentence im-  
21          posed, that the person forfeit to the United States—

22                 “(A) any property constituting or derived from  
23                 any proceeds the person obtained, directly or indi-  
24                 rectly, as the result of such violation, and

1           “(B) any of the person’s property used, or in-  
2           tended to be used, in any manner or part, to com-  
3           mit, facilitate, aid, or abet the commission of such  
4           violation,

5 if the court in its discretion so determines, taking into ac-  
6 count the nature, scope, and proportionality of the use of  
7 the property in the offense.

8           “(3) When a person is convicted of an offense under  
9 this section, or pleads guilty or nolo contendere to an of-  
10 fense under this section, the court, pursuant to sections  
11 3556, 3663A, and 3664, shall order the person to pay res-  
12 titution to the owner of the mark and any other victim  
13 of the offense as an offense against property referred to  
14 in section 3663A(c)(1)(A)(ii).

15           “(4) The term ‘victim’, as used in paragraph (3), has  
16 the meaning given that term in section 3663A(a)(2).”.

17           (3) Subsection (e)(1) is amended—

18                   (A) by striking subparagraph (A) and in-  
19           serting the following:

20                           “(A) a spurious mark—

21                                   “(i) that is used in connection with  
22                                   trafficking in any goods, services, labels,  
23                                   patches, stickers, wrappers, badges, em-  
24                                   blems, medallions, charms, boxes, con-

1           tainers, cans, cases, hangtags, documenta-  
2           tion, or packaging of any type or nature;

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

9           “(iii) that is applied to or used in con-  
10          nection with the goods or services for  
11          which the mark is registered with the  
12          United States Patent and Trademark Of-  
13          fice, or is applied to or consists of a label,  
14          patch, sticker, wrapper, badge, emblem,  
15          medallion, charm, box, container, can,  
16          case, hangtag, documentation, or pack-  
17          aging of any type or nature that is capable  
18          of being applied to or used in connection  
19          with the goods or services for which the  
20          mark is registered in the United States  
21          Patent and Trademark Office; and

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

1           (B) in the matter following subparagraph  
2           (B), by striking “used in connection with goods  
3           or services” and inserting “that is applied to  
4           goods, or used in connection with services,”.

5           (4) Section 2320 is further amended—

6           (A) by redesignating subsection (f) as sub-  
7           section (g); and

8           (B) by inserting after subsection (e) the  
9           following:

10          “(f) Nothing in this section shall entitle the United  
11          States to bring a criminal cause of action for the repack-  
12          aging, without deception, of genuine goods or services.”.

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