

# Union Calendar No. 34

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 32

**[Report No. 109–68]**

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. ROHRBACHER, 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

MAY 3, 2005

Additional sponsors: Mr. Manzullo, Mrs. BLACKBURN, Mr. SMITH of Washington, Mr. PENCE, Mr. SOUDER, Ms. VELÁZQUEZ, Mr. CALVERT, Mr. SCHWARZ of Michigan, Mr. ROYCE, Mr. GUTKNECHT, Mr. ACKERMAN, Mr. FLAKE, Mr. GERLACH, Mr. JENKINS, Mr. MCKEON, Mr. KILDEE, Mr. PLATTS, Mr. WILSON of South Carolina, Mr. HOSTETTLER, Mrs. MALONEY, Mr. WEINER, Mr. MENENDEZ, Mr. GARRETT of New Jersey, Mr. BROWN of Ohio, Mr. FEENEY, Mr. RYAN of Ohio, Ms. Watson, Mr. FITZPATRICK of Pennsylvania, Mr. KANJORSKI, Ms. HART, Mrs. BONO, Mr. GALLEGLY, Mr. FORTUÑO, Mr. ROTHMAN, Mr. CHOCOLA, Mr. PETERSON of Minnesota, Mr. GOHMERT, and Mr. GORDON,

MAY 3, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 4, 2005]

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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 jobs*  
9 *because of the manufacture, distribution, and sale of*  
10 *counterfeit goods;*

11 (2) *the Bureau of Customs and Border Protec-*  
12 *tion estimates that counterfeiting costs the United*  
13 *States \$200 billion annually;*

14 (3) *counterfeit automobile parts, including brake*  
15 *pads, cost the auto industry alone billions of dollars*  
16 *in lost sales each year;*

17 (4) *counterfeit products have invaded numerous*  
18 *industries including those producing auto parts, elec-*

1        *trical appliances, medicines, tools, toys, office equip-*  
2        *ment, clothing, and many other products;*

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

6            *(6) ongoing counterfeiting of manufactured goods*  
7        *poses a widespread threat to public health and safety;*  
8        *and*

9            *(7) strong domestic criminal remedies against*  
10       *counterfeiting will permit the United States to seek*  
11       *stronger anticounterfeiting provisions in bilateral and*  
12       *international agreements with trading partners.*

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

14        *Section 2320 of title 18, United States Code, is amend-*  
15       *ed as follows:*

16            *(1) Subsection (a) is amended by inserting after*  
17        *“such goods or services” the following: “, or inten-*  
18        *tionally traffics or attempts to traffic in labels, patch-*  
19        *es, stickers, wrappers, badges, emblems, medallions,*  
20        *charms, boxes, containers, cans, cases, hangtags, docu-*  
21        *mentation, or packaging of any type or nature, know-*  
22        *ing that a counterfeit mark has been applied thereto,*  
23        *the use of which is likely to cause confusion, to cause*  
24        *mistake, or to deceive,”.*

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

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

7       “(2) The court, in imposing a sentence upon a person  
8 convicted of a violation of this section, or upon a person  
9 who pleads guilty or nolo contendere to a violation of this  
10 section, shall order, in addition to any other sentence im-  
11 posed, that the person forfeit to the United States—

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

15               “(B) any of the person’s property used, or in-  
16 tended to be used, in any manner or part, to commit,  
17 facilitate, aid, or abet the commission of such viola-  
18 tion, if the court in its discretion so determines, tak-  
19 ing into account the nature, scope, and proportion-  
20 ality of the use of the property in the offense.

21       “(3) When a person is convicted of an offense under  
22 this section, or pleads guilty or nolo contendere to an offense  
23 under this section, the court, pursuant to sections 3556,  
24 3663A, and 3664, shall order the person to pay restitution  
25 to the owner of the mark and any other victim of the offense

1 *as an offense against property referred to in section*  
2 *3663A(c)(1)(A)(ii).*

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

5 (3) *Subsection (e)(1) is amended—*

6 (A) *by striking subparagraph (A) and in-*  
7 *serting the following:*

8 “(A) *a spurious mark—*

9 “(i) *that is used in connection with*  
10 *trafficking in any goods, services, labels,*  
11 *patches, stickers, wrappers, badges, em-*  
12 *blems, medallions, charms, boxes, con-*  
13 *tainers, cans, cases, hangtags, documenta-*  
14 *tion, or packaging of any type or nature;*

15 “(ii) *that is identical with, or substan-*  
16 *tially indistinguishable from, a mark reg-*  
17 *istered on the principal register in the*  
18 *United States Patent and Trademark Office*  
19 *and in use, whether or not the defendant*  
20 *knew such mark was so registered;*

21 “(iii) *that is applied to or used in con-*  
22 *nection with the goods or services for which*  
23 *the mark is registered with the United*  
24 *States Patent and Trademark Office, or is*  
25 *applied to or consists of a label, patch,*

1           *sticker, wrapper, badge, emblem, medallion,*  
2           *charm, box, container, can, case, hangtag,*  
3           *documentation, or packaging of any type or*  
4           *nature that is capable of being applied to or*  
5           *used in connection with the goods or serv-*  
6           *ices for which the mark is registered in the*  
7           *United States Patent and Trademark Of-*  
8           *fice; and*

9                     *“(iv) the use of which is likely to cause*  
10            *confusion, to cause mistake, or to deceive;*  
11            *or”;* and

12                     *(B) in the matter following subparagraph*  
13            *(B), by striking “used in connection with goods*  
14            *or services” and inserting “that is applied to*  
15            *goods, or used in connection with services,”.*

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

17                     *(A) by redesignating subsection (f) as sub-*  
18            *section (g); and*

19                     *(B) by inserting after subsection (e) the fol-*  
20            *lowing:*

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



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