

1 AN ACT concerning property.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Counterfeit Trademark Act is amended by  
5 changing Sections 1, 2, 3, 8, and 9 as follows:

6 (765 ILCS 1040/1) (from Ch. 140, par. 23)

7 Sec. 1. For the purposes of this Act, unless otherwise  
8 required by the context:

9 "Counterfeit item" means any goods, components of goods, or  
10 services made, produced, or knowingly sold or knowingly  
11 distributed that use or display a counterfeit mark ~~trade mark,~~  
12 ~~trade name, or service mark that is a spurious mark identical~~  
13 ~~with or substantially indistinguishable from the registered~~  
14 ~~mark as registered with the United States Patent and Trademark~~  
15 ~~Office.~~

16 "Counterfeit mark" means a spurious mark:

17 (1) That is applied to or used in connection with any  
18 goods, services, labels, patches, fabric, stickers,  
19 wrappers, badges, emblems, medallions, charms, boxes,  
20 containers, cans, cases, hangtags, documentation, or  
21 packaging or any other components of any type or nature  
22 that are designed, marketed, or otherwise intended to be  
23 used on or in connection with any goods or services;

1           (2) That is identical with, or substantially  
2           indistinguishable from, a mark registered in this State,  
3           any state, or on the principal register in the United  
4           States Patent and Trademark Office and in use, whether or  
5           not the defendant knew such mark was so registered; and

6           (3) The application or use of which either (i) is  
7           likely to cause confusion, to cause mistake, or to deceive;  
8           or (ii) otherwise intended to be used on or in connection  
9           with the goods or services for which the mark is  
10           registered.

11           ~~"Mark" includes any trade-mark or service mark whether~~  
12           ~~registered or not.~~ "Trade-mark" means anything adopted and used  
13           by a person to identify goods made, sold, produced or  
14           distributed by him or her or with his or her authorization and  
15           which distinguishes them from goods made, sold, produced or  
16           distributed by others and registered in this State, any state,  
17           or on the principal register in the United States Patent and  
18           Trademark Office.

19           "Service mark" means anything adopted and used by a person  
20           to identify services rendered by him or her or with his or her  
21           authorization and that distinguishes them from services  
22           rendered by others.

23           "Person" means any individual, firm, partnership,  
24           corporation, association, union or other organization.

25           A mark shall be deemed to be "used" (1) in the case of a  
26           trade-mark, when it is placed in any manner on the goods, in or

1 on any container for the goods, on the tags or labels affixed  
2 to the goods or containers, or is displayed in physical  
3 association with the goods in the sale or distribution thereof,  
4 or (2) in the case of a service mark, if it identifies a  
5 service, even though the service may be rendered in connection  
6 with the sale or distribution of goods of the owner of the  
7 mark. A mark shall be deemed to be "used in this State" (1) in  
8 the case of a trade-mark when it is used on goods which are  
9 sold or otherwise distributed in this State, or (2) in the case  
10 of a service mark if the service identified by the mark is  
11 rendered or received in this State.

12 "Trade-name" includes individual names and surnames, firm  
13 names and corporate names used by manufacturers,  
14 industrialists, merchants, agriculturists, and others to  
15 identify their businesses, vocations, or occupations; the  
16 names or titles lawfully adopted and used by persons, firms,  
17 associations, corporations, companies, unions, and any  
18 manufacturing, industrial, commercial, agricultural, or other  
19 organizations engaged in trade or commerce and capable of suing  
20 and being sued in a court of law.

21 "Retail value" means:

22 (1) The counterfeiter's per unit regular price for the  
23 counterfeit item, unless the counterfeit item would appear  
24 to a reasonably prudent person to be authentic, then the  
25 retail value shall be the price of the authentic  
26 counterpart; or if no authentic reasonably similar

1       counterpart exists, then the retail value shall remain the  
2       counterfeiter's per unit regular sale price for the  
3       counterfeit item.

4           (2) In the case of labels, patches, stickers, wrappers,  
5       badges, emblems, medallions, charms, boxes, containers,  
6       cans, cases, hangtags, documentation, or packaging or any  
7       other components of any type or nature that are designed,  
8       marketed, or otherwise intended to be used on or in  
9       connection with any counterfeit item, the retail value  
10       shall be treated as if each component was a finished good  
11       and valued as detailed in paragraph (1) above.

12       (Source: P.A. 89-693, eff. 6-1-97.)

13           (765 ILCS 1040/2) (from Ch. 140, par. 24)

14       Sec. 2. Whoever uses a counterfeit mark ~~counterfeits~~ or  
15       imitates any trade-mark or service mark of which he or she is  
16       not the rightful owner or in any way utters or circulates any  
17       counterfeit or imitation of such a trade-mark or service mark  
18       or knowingly uses such counterfeit or imitation or knowingly  
19       sells or disposes of or keeps or has in his or her possession,  
20       with intent that the same shall be sold or disposed of, any  
21       goods, wares, merchandise, or other product of labor or  
22       service, to which any such counterfeit or imitation is attached  
23       or affixed, or on which any such counterfeit or imitation is  
24       printed, painted, stamped or impressed, or knowingly sells or  
25       disposes of any goods, wares, merchandise or other product of

1 labor contained in any box, case, can, or package to which or  
2 on which any such counterfeit or imitation is attached,  
3 affixed, printed, painted, stamped or impressed, or keeps or  
4 has in his possession with intent that the same shall be sold  
5 or disposed of, any goods, wares, merchandise or other product  
6 of labor in any box, case, can or package to which or on which  
7 any such counterfeit, or imitation is attached, affixed,  
8 printed, painted, stamped or impressed or knowingly sells a  
9 service using a counterfeit service mark, shall be guilty of a  
10 Class A misdemeanor for each offense, or in the case of a  
11 counterfeit item shall be punished as provided in Section 8.  
12 (Source: P.A. 89-693, eff. 6-1-97.)

13 (765 ILCS 1040/3) (from Ch. 140, par. 25)

14 Sec. 3. Every person who shall knowingly use a counterfeit  
15 mark or display a trade-mark, trade name, or service mark of  
16 which he or she is not the lawful owner in any manner not  
17 authorized by such owner, whether or not the unauthorized use  
18 creates a likelihood of confusion or misunderstanding, (a) in  
19 the sale of goods or services produced by the owner, but with  
20 alterations in packaging or labeling, or (b) in the sale of  
21 goods or services produced by the owner but in a packaging form  
22 not intended by him for such sale, or (c) in the packaging or  
23 labeling of goods or services not produced by the owner, if the  
24 trade-mark, trade name, or service mark of the owner is used  
25 for the purpose or with the effect of exploiting or impairing

1 the owner's good will or as a means of representing a quality,  
2 property or characteristic of the goods or services being sold,  
3 other than the utility of the goods or services in the repair  
4 of or as a replacement of a component of the product of the  
5 owner and the trade-mark, trade name, or service mark is used  
6 in a non-misleading manner solely to indicate such utility,  
7 shall be deemed guilty of a Class A misdemeanor, or in the case  
8 of a counterfeit item shall be punished as provided in Section  
9 8. In all cases where such owner is an incorporated association  
10 or union, suits under this Act may be commenced and prosecuted  
11 by any officer or member of such association or union on behalf  
12 of and for the use of such association or union.

13 (Source: P.A. 89-693, eff. 6-1-97.)

14 (765 ILCS 1040/8)

15 Sec. 8. Sentence.

16 (a) A person who knowingly sells, offers for sale, holds  
17 for sale, or uses fewer than 100 counterfeit items or  
18 counterfeit items having a retail value in the aggregate of  
19 \$300 ~~\$1,000~~ or less is guilty of a Class A misdemeanor and  
20 shall be fined at least 25% of the retail value of all  
21 counterfeit items but no more than \$1,000, except as follows  
22 ~~that:~~

23 (1) A person who has a prior conviction for a violation  
24 of this Act within the preceding 5 years is guilty of a  
25 Class 4 felony and shall be fined at least 50% ~~25%~~ but no

1 more than 100% of the retail value of all counterfeit  
2 items.

3 (2) A person who, as a result of the offense, causes  
4 bodily harm to another is guilty of a Class 3 felony and  
5 shall be fined at least 50% but no more than 100% of the  
6 retail value of all counterfeit items.

7 (3) A person who, as a result of the offense, causes  
8 serious bodily harm to, or the death of, another is guilty  
9 of a Class 2 felony.

10 (b) A person who knowingly sells, offers for sale, holds  
11 for sale, or uses 100 or more but fewer than 500 counterfeit  
12 items or counterfeit items having a retail value in the  
13 aggregate of more than \$300 ~~\$1,000~~ but less than \$10,000  
14 ~~\$25,000~~ is guilty of a Class 3 felony ~~Class A misdemeanor~~ and  
15 shall be fined at least 25% but no more than 100% of the retail  
16 value of all counterfeit items, except as follows that:

17 (1) A person who has a prior conviction for a violation  
18 of this Act within the preceding 5 years is guilty of a  
19 Class 2 ~~4~~ felony and shall be fined at least 50% ~~25%~~ but no  
20 more than 100% of the retail value of all counterfeit  
21 items.

22 (2) A person who, as a result of the offense, causes  
23 serious bodily harm to, or the death of, another is guilty  
24 of a Class 2 felony.

25 (c) A person who knowingly sells, offers for sale, holds  
26 for sale, or uses 500 or more but fewer than 2,000 counterfeit

1 items or counterfeit items having a retail value in the  
2 aggregate of \$10,000 ~~\$25,000~~ or more but less than \$100,000 is  
3 guilty of a Class 2 ~~4~~ felony and shall be fined at least 50% ~~25%~~  
4 but no more than 100% of the retail value of all counterfeit  
5 items, except that a person who has a prior conviction of this  
6 Act within the preceding 5 years is guilty of a Class 2 felony  
7 and shall be fined at least 100% but no more than 300% of the  
8 retail value of all counterfeit items.

9 (d) A person who knowingly sells, offers for sale, holds  
10 for sale, or uses 2,000 or more counterfeit items or  
11 counterfeit items having a retail value in the aggregate of  
12 \$100,000 but less than \$500,000 ~~or more~~ is guilty of a Class 1  
13 ~~3~~ felony and shall be fined at least 50% ~~25%~~ but no more than  
14 100% of the retail value of all counterfeit items, except that  
15 a person who has a prior conviction of this Act within the  
16 preceding 5 years is guilty of a Class 1 felony and shall be  
17 fined at least 100% but no more than 300% of the retail value  
18 of all counterfeit items.

19 (e) A person who knowingly sells, offers for sale, holds  
20 for sale, or uses 2,000 or more counterfeit items or  
21 counterfeit items having a retail value in the aggregate of  
22 \$500,000 or more is guilty of a Class 1 non-probationable  
23 felony.

24 (e-5) ~~(d-5)~~ For the purposes of determining the number of  
25 counterfeit items under subsection (a), (b), (c), ~~or~~ (d), or  
26 (e), the service marks or trade marks need not be an aggregate



1 of identical marks but may be the aggregate of all counterfeit  
2 items offered for sale, held for sale, or used by the  
3 defendant.

4 (f) ~~(e)~~ Unless otherwise specifically provided, a person,  
5 including a corporation, convicted of violating this Act shall  
6 be fined at least 25% of the retail value of all the  
7 counterfeit items. In addition to any fine, the court shall  
8 ~~may, in its discretion,~~ order that restitution be paid to the  
9 owners of the trademark, trade name, or service mark, and to  
10 any other victim of the offense.

11 ~~(f)~~ A manufacturer of counterfeit items is guilty of a  
12 Class 3 ~~4~~ felony for a first offense and a Class 2 ~~3~~ felony for  
13 second or subsequent offenses and may be fined up to 3 times  
14 the retail value of all counterfeit items produced by the  
15 manufacturer.

16 (h) A person having possession, custody, or control of more  
17 than 25 counterfeit items or counterfeit marks shall be  
18 presumed not to be simply in possession of such, but to possess  
19 said items with intent to offer for sale, to sell, or to  
20 distribute.

21 (i) A state or federal certificate of registration of  
22 trademark is prima facie evidence of the facts stated therein.

23 (j) The remedies provided herein shall be cumulative to the  
24 other civil and criminal remedies provided by law.

25 ~~(g) The retail value of the counterfeit item shall be the~~  
26 ~~counterfeiter's per unit sale price for the counterfeit items.~~

1 ~~The retail value of a component of a counterfeit item shall be~~  
2 ~~the same as the sale price of the counterfeit item with which~~  
3 ~~the component is sold.~~

4 (Source: P.A. 89-693, eff. 6-1-97.)

5 (765 ILCS 1040/9)

6 Sec. 9. Seizure and disposition.

7 (a) A peace officer shall ~~may~~, upon probable cause, seize  
8 any counterfeit items, counterfeit marks, ~~goods, wares,~~  
9 ~~merchandise, or other product of labor or services to which a~~  
10 ~~counterfeit trademark, trade name, or service mark is attached~~  
11 ~~or affixed, or on which the counterfeit is printed, painted,~~  
12 ~~stamped or impressed,~~ or any component of that merchandise  
13 knowingly possessed in violation of this Act.

14 (b) A peace officer shall ~~may~~ seize any vehicle, aircraft,  
15 vessel, machinery or other instrumentality which the officer  
16 reasonably believed was knowingly used to commit or facilitate  
17 a violation of this Act.

18 (c) A peace officer shall, upon probable cause, seize any  
19 proceeds resulting from a violation of this Act.

20 (d) ~~(e)~~ Seized counterfeit goods shall be destroyed upon  
21 the written consent of the defendant or by judicial  
22 determination that the seized goods are counterfeit items or  
23 otherwise bear the trademark, trade name or service mark  
24 without the authorization of the owner, unless another  
25 disposition of the goods is consented to by the owner of the

1 trademark, trade name or service mark.

2 The seizure and forfeiture of vehicles, aircraft, vessels,  
3 machinery, or other instrumentalities provided for by this  
4 Section shall be carried out in the same manner and pursuant to  
5 the same procedures as provided in Article 36 of the Criminal  
6 Code of 1961 with respect to vessels, vehicles, and aircraft.

7 (Source: P.A. 89-693, eff. 6-1-97.)