

AN ACT concerning property.

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

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

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

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

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

"Counterfeit mark" means a spurious mark:

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

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

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

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

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

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

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

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

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

"Retail value" means:

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

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

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

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

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

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

labor contained in any box, case, can, or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, or keeps or has in his possession with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor in any box, case, can or package to which or on which any such counterfeit, or imitation is attached, affixed, printed, painted, stamped or impressed or knowingly sells a service using a counterfeit service mark, shall be guilty of a Class A misdemeanor for each offense, or in the case of a counterfeit item shall be punished as provided in Section 8.

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

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

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

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

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

(765 ILCS 1040/8)

Sec. 8. Sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(765 ILCS 1040/9)

Sec. 9. Seizure and disposition.

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

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

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

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

trademark, trade name or service mark.

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

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