

ENROLLMENT(S)

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(5)

AN ACT
D.C. ACT 11-362

*Codification
District of
Columbia
Code
1997 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JULY 26, 1996

To prohibit counterfeiting of trademarks, service marks, or other intellectual property, permit the seizure of counterfeit intellectual property and personal property used in the manufacture of counterfeit property, and prohibit the knowing possession of material for the reproduction of counterfeit intellectual property.

**New Chapter
7A,
Title 22**

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Commercial Counterfeiting Criminalization Act of 1996".

Sec. 2. Definitions.

**New Section
22-751**

(a) For the purposes of this act, the term:

(1) "Counterfeit mark" means:

(A) Any unauthorized reproduction or copy of intellectual property; or

(B) Intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.

(2) "Intellectual property" means any trademark, service mark, trade name, label, term, picture, seal, word, or advertisement or any combination of these adopted or used by a person to identify such person's goods or services and which is lawfully filed for record in the Office of the Secretary of State of any state or which the exclusive right to reproduce is guaranteed under the laws of the United States or the District of Columbia.

(3) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

Sec. 3. Trademark counterfeiting.

**New Section
22-752**

(a) A person commits the offense of counterfeiting if such person willfully manufactures, advertises, distributes, offers for sale, sells, or possesses with intent to sell or

ENROLLED ORIGINAL

distribute any items, or services bearing or identified by a counterfeit mark. There shall be a rebuttable presumption that a person having possession, custody, or control of more than 15 items bearing a counterfeit mark possesses said items with the intent to sell or distribute.

(b) A person convicted of counterfeiting shall be subject to the following penalties:

(1) For the 1st conviction, except as provided in paragraphs (2) and (3) of this subsection, by a fine not exceeding \$1,000 or by imprisonment for not more than 180 days, or both;

(2) For the 2nd conviction, or if convicted under this section of an offense involving more than 100 but fewer than 1,000 items, or involving items with a total retail value greater than \$1,000 but less than \$10,000, by a fine not exceeding \$3,000 or by imprisonment for not more than 3 years, or both; and

(3) For the 3rd or subsequent conviction, or if convicted under this section of an offense involving the manufacture or production of items bearing counterfeit marks involving 1,000 or more items, or involving items with a total retail value of \$10,000 or greater, by a fine not exceeding \$10,000 or by imprisonment for not more than 10 years, or both.

(c) For the purposes of this act, the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, advertises, distributes, offers for sale, sells, or possesses.

(d) The fines provided in subsection (b) of this section shall be no less than 3 times the retail value of the items bearing, or services identified by, a counterfeit mark, unless extenuating circumstances are shown by the defendant.

(e) Any items bearing a counterfeit mark and all personal property, including, but not limited to, any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this act shall be seized by any law enforcement officer in accordance with the procedures established by section 502 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Code § 33-552).

(1) All seized personal property shall be forfeited.

(2) Upon the request of the owner of the intellectual property, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition.

(3) If the owner of the intellectual property does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the owner of the intellectual property consents to another disposition.

(f) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

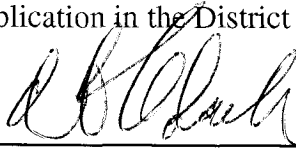
(g) The remedies provided for herein shall be cumulative to the other civil and criminal remedies provided by law.

Sec. 4. Fiscal impact statement.

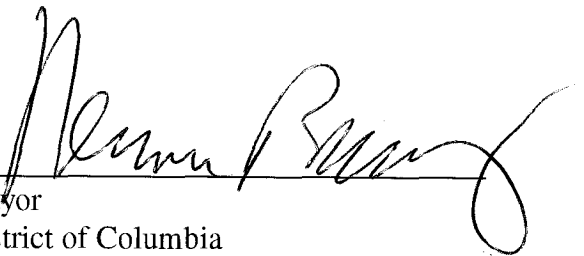
The fiscal impact of this legislation will be negligible. According to Deputy Police Chief Bacon, the legislation will be implemented through the existing Vendor Squad with as-needed assistance from trained officers from the various police districts. Additionally, the Metropolitan Police Department will rely upon industry representatives to investigate and identify violators which will save the department time and other resources. Those violators are contacted by Vendor Squad officers and appropriate follow up is made.

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), and a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(2)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: JULY 26, 1996



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD ELEVEN

RECORD OF OFFICIAL COUNCIL VOTE

B11-660

Docket No. _____

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 7-3-96

VOICE VOTE
RECORDED VOTE ON REQUEST

APPROVED

CHAVOUS

ABSENT _____

ROLL CALL VOTE - Result _____

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Clarke | | | | | Jarvis | | | | | Smith, Jr. | | | | |
| Brazil | | | | | Lightfoot | | | | | Thomas, Sr. | | | | |
| Chavous | | | | | Mason | | | | | Whittington | | | | |
| Cropp | | | | | Patterson | | | | | | | | | |
| Evans | | | | | Ray | | | | | | | | | |

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Charles Jones
Secretary to the Council

July 15, 1996
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 7-17-96

VOICE VOTE
RECORDED VOTE ON REQUEST

APPROVED

BRAZIL, CHAVOUS, CROPP AND THOMAS

ABSENT _____

ROLL CALL VOTE - Result _____

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Clarke | | | | | Jarvis | | | | | Smith, Jr. | | | | |
| Brazil | | | | | Lightfoot | | | | | Thomas, Sr. | | | | |
| Chavous | | | | | Mason | | | | | Whittington | | | | |
| Cropp | | | | | Patterson | | | | | | | | | |
| Evans | | | | | Ray | | | | | | | | | |

X-indicates no

AB-Absent

NV-Present not voting

CERTIFICATION RECORD

Charles Jones
Secretary to the Council

July 15, 1996
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE
RECORDED VOTE ON REQUEST

ABSENT _____

ROLL CALL VOTE - Result _____

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Clarke | | | | | Jarvis | | | | | Smith, Jr. | | | | |
| Brazil | | | | | Lightfoot | | | | | Thomas, Sr. | | | | |
| Chavous | | | | | Mason | | | | | Whittington | | | | |
| Cropp | | | | | Patterson | | | | | | | | | |
| Evans | | | | | Ray | | | | | | | | | |

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date