

TRADEMARK COUNTERFEITING VIOLATIONS

House Bills 4728 and 4729 with committee amendment First Analysis (5-8-97)

Sponsor: Rep. Kirk Profit
Committee: Commerce

THE APPARENT PROBLEM

Although current Michigan law prohibits and penalizes the forging and counterfeiting of trademarks, according to testimony before the House Commerce Committee, prosecuting attorneys reportedly are not prosecuting violations of the current law. Legislation has been introduced that would both revise penalties for counterfeiting trademarks and allow the forfeiture of merchandise containing such trademarks.

THE CONTENT OF THE BILLS:

House Bill 4728 would amend the Michigan Penal Code (MCL 750.263 et al.) to rewrite the provisions dealing with the forging and counterfeiting of trademarks and to provide new penalties, including felony penalties, for counterfeit trademark violations. House Bill 4729 would make complementary amendments to the sections of the Revised Judicature Act (MCL 600.4701) dealing with forfeiture and seizure. The two bills are tie-barred and would take effect September 1, 1997.

House Bill 4728 would provide the following.

Misdemeanor counterfeiting. A person who willfully counterfeited an identifying mark with intent to deceive and defraud or to represent an item of property or service as bearing or identified by an authorized identifying mark would be guilty of a misdemeanor, punishable by imprisonment for not more than one year or a fine of not more than \$500, or both. (The bill rewrites the current provision, which has the same penalty.)

Misdemeanor delivery and use. A person who willfully delivers, offers to deliver, uses, displays, advertises, or possesses with intent to deliver any item of property or services bearing or identified by a counterfeit mark would be guilty of a misdemeanor punishable by imprisonment for not more than one year or by a fine of not more than \$500 or three times the aggregate value of the violation, whichever was greater, or both imprisonment and fine. Willful possession of more than 25 items of property bearing or identified by a

counterfeit mark would give rise to a presumption that the person possessed the items with intent to deliver them. (The bill would repeal the current provision regarding selling goods bearing forged labels, which is a misdemeanor.)

Felony delivery and use. The offense referred to above would be a felony punishable by imprisonment for not more than five years or by a fine of not more than \$50,000 or three times the aggregate value of the violation, whichever was greater, or both imprisonment and fine, if any of the following applied:

- the person had a prior conviction of state counterfeiting laws here and in other states or of a federal counterfeiting law;
- the violation involved more than 100 items of property; or
- the aggregate value of the violation was more than \$1,000.

Felony manufacturing. A person who willfully manufactured or produced an item of property bearing or identified by a counterfeit mark would be guilty of a felony punishable by imprisonment for not more than five years or by a fine of not more than \$50,000 or three times the aggregate value of the violation, whichever was greater, or by both imprisonment or fine.

Seizure of property. Any item of property bearing a counterfeit mark would be seized under warrant or incident to a lawful arrest. Upon final disposition of the case and the court's determination that an item bears a counterfeit mark, either 1) upon request of the owner of the identifying mark, the item would be returned to the owner for destruction or other disposition or use approved by the court; or 2) absent such a request, the seizing law enforcement agency would destroy the property as contraband, or the court could order an alternative disposition with the trademark owner's consent.

Possession of a mark/misdemeanor. A person who possessed a counterfeit mark with intent to use it or deliver it, who possessed a die, plate, engraving, template, pattern, or material with intent to create a counterfeit mark, or who possessed an identifying mark without authorization of the mark's owner and with intent to create a counterfeit mark would be guilty of a misdemeanor punishable by imprisonment for not more than one year or by a fine of not more than \$500, or both. (The bill rewrites the current provision, which has the same penalty.)

FISCAL IMPLICATIONS:

Fiscal information is not available. (5-7-97)

ARGUMENTS:

For:

The bills would enhance the protection of trademark and logo items in Michigan by increasing the penalties for counterfeiting trademarks and enhancing the likelihood that prosecution will proceed when violations occur. Trademarks and logos are valuable rights held by a number of entities in the state, including state universities and professional sports franchises, and infringement of these rights through the counterfeiting and sale of articles with these trademarks and logos can cause serious economic harm to their rightful owners. Further, whereas legitimate manufacturers pay taxes, counterfeiters do not, so the bills would enhance tax revenues. Finally, counterfeit items may be of inferior quality, or even unsafe, and so the bills would promote the safety and welfare of the general public, who have the right to expect that when they buy a trademarked product that it will meet certain standards.

POSITIONS:

The University of Michigan supports the bills. (5-7-97)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.