

FIRST REGULAR SESSION

HOUSE BILL NO. 482

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WALTON (Sponsor), MOORE, CURLS, WALSH, YAEGER, BRINGER, SWINGER, HARRIS (110), ZWEIFEL, SCHIEFFER AND ROORDA (Co-sponsors).

Read 1st time January 18, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0558L.01I

AN ACT

To repeal section 570.103, RSMo, and to enact in lieu thereof one new section relating to counterfeiting, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 570.103, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 570.103, to read as follows:

570.103. 1. As used in this section and section 570.105, the following words mean:

(1) "Counterfeit mark", [any unauthorized reproduction or copy of intellectual property or 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", any trademark, service mark, trade name, label, term, device, design, or word adopted or used by a person to identify such person's goods or services;

(3)] **a spurious mark:**

(a) **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;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (b) That is identical with or substantially indistinguishable from a mark registered
15 in this state, any other state, or on the principal register in the United States Patent and
16 Trademark Office and in use, regardless of whether the defendant knew such mark was
17 so registered; and

18 (c) The application or use of which either:

19 a. Is likely to cause confusion, to cause mistake, or to deceive; or

20 b. Otherwise intended to be used on or in connection with the goods or services for
21 which the mark is registered;

22 (2) "Retail value"[,] :

23 (a) The counterfeiter's regular selling price for the item or service bearing or identified
24 by the counterfeit mark[. In the case of items bearing a counterfeit mark which are components
25 of a finished product, the retail value shall be the counterfeiter's regular selling price of the
26 finished product on or in which the component would be utilized] ; **except that, if the goods or**
27 **services bearing a counterfeit mark would appear to a reasonably prudent person to be**
28 **authentic, the retail value shall be the price of the authentic counterpart. If no authentic**
29 **reasonably similar counterpart exists, the retail value shall remain the counterfeiter's**
30 **regular selling price;**

31 (b) For labels, patches, fabric, stickers, wrappers, badges, emblems, medallions,
32 charms, boxes, containers, cans, cases, hangtags, documentation, or packaging or any other
33 components of any type or nature of a finished product that are designed, marketed, or
34 otherwise intended to be used on or in connection with any goods or services, the retail
35 value shall be treated as if each component was a finished good and valued in accordance
36 with paragraph (a) of this subdivision;

37 (3) "Physical injury", physical pain, illness, or any impairment of physical
38 condition;

39 (4) "Serious physical injury", physical injury that creates a substantial risk of
40 death or that causes serious disfigurement or protracted loss or impairment of the function
41 of any part of the body.

42 2. Any person who [willfully] **knowingly transports**, manufactures, uses, displays,
43 advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute any
44 [item, or services,] **goods, services, labels, patches, fabric, stickers, wrappers, badges,**
45 **emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or**
46 **packaging or any other components of any type or nature that are designed, marketed, or**
47 **otherwise intended to be used on or in connection with any goods or services bearing or**
48 identified by a counterfeit mark, shall be guilty of the crime of counterfeiting.

49 **3.** A person having possession, custody or control of more than twenty-five [items]
50 **goods, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms,**
51 **boxes, containers, cans, cases, hangtags, documentation, or packaging or any other**
52 **components of any type or nature** bearing a counterfeit mark shall be presumed to possess said
53 items with intent to sell or distribute.

54 [3.] **4.** Counterfeiting [shall be] **is** a class A misdemeanor, except as provided in
55 subsections [4 and] **5, 6, and 7** of this section. **Counterfeiting is a class A misdemeanor if the**
56 **offense involves less than one hundred items bearing one or more counterfeit marks or the**
57 **total retail value is one thousand dollars or less.**

58 [4.] **5.** Counterfeiting [shall be] **is** a class [D] **C** felony if:

59 (1) The defendant has previously been convicted under this section; or

60 (2) The violation involves more than one hundred but fewer than one thousand items
61 bearing a counterfeit mark or the total retail value of all items bearing, or services identified by,
62 a counterfeit mark is more than one thousand dollars, but less than ten thousand dollars.

63 [5.] **6.** Counterfeiting shall be a class [C] **B** felony if:

64 (1) The defendant has been previously convicted of two or more offenses under this
65 section;

66 (2) The violation involves the manufacture or production of items bearing counterfeit
67 marks; [or]

68 (3) The violation involves one thousand or more items bearing a counterfeit mark or the
69 total retail value of all items bearing, or services identified by, a counterfeit mark is more than
70 ten thousand dollars; **or**

71 **(4) By the commission of any offense under this section, the offender knowingly or**
72 **recklessly causes or attempts to cause the physical injury of another person.**

73 [6.] **7.** Counterfeiting is a class A felony if by the commission of any offense under
74 **this section, the offender knowingly or recklessly causes or attempts to cause the serious**
75 **physical injury or death of another person.**

76 **8.** For purposes of this section, the quantity or retail value of items or services shall
77 include the aggregate quantity or retail value of all items bearing, or services identified by, every
78 counterfeit mark the defendant **transports**, manufactures, uses, displays, advertises, distributes,
79 offers for sale, sells or possesses.

80 [7.] **9.** Any person convicted of counterfeiting shall be fined **in accordance with**
81 **chapter 560, RSMo, or in** an amount up to three times the retail value of the items **seized,**
82 **manufactured, and/or sold,** bearing, or services identified by, a counterfeit mark, [unless
83 extenuating circumstances are shown by the defendant] **whichever is greater.**

84 [8.] **10.** The remedies provided for herein shall be cumulative to the other civil remedies
85 provided by law.

86 [9.] **11.** Any state or federal certificate of registration [of any intellectual property] shall
87 be prima facie evidence of the facts stated therein.

88 **12. The following property shall be subject to forfeiture to the state of Missouri and**
89 **no property right shall exist in such property:**

90 (1) Any article bearing or consisting of a counterfeit mark used in committing a
91 violation of this section;

92 (2) Any property used in any manner or part to commit or to facilitate the
93 commission of a violation of this section.

94 **13. (1) When imposing sentence on a person convicted of an offense under this**
95 **section, the court shall order, in addition to any other sentence imposed, that the person**
96 **forfeit to the state of Missouri:**

97 (a) Any property constituting or derived from any proceeds the person obtained,
98 directly or indirectly, as the result of the offense;

99 (b) Any of the person's property used or intended to be used in any manner or part
100 to commit, facilitate, aid, or abet the commission of the offense; and

101 (c) Any item that bears or consists of a counterfeit mark used in committing the
102 offense.

103 (2) The forfeiture of property under subdivision (1) of this subsection, including
104 any seizure and disposition of the property and any related judicial or administrative
105 proceeding, shall be governed by the procedures set forth in section 570.105, RSMo.

106 **14. At the conclusion of all criminal and civil forfeiture proceedings, the court shall**
107 **order that any forfeited item bearing or consisting of a counterfeit mark be destroyed or**
108 **disposed of in another manner with the written consent of the trademark owners.**

109 **15. When a person is convicted of an offense under this section, the court shall**
110 **order the person to pay restitution to the trademark owner and any other victim of the**
111 **offense. In determining the value of the property loss involving an offense against the**
112 **trademark owner, a court shall grant restitution for any and all amounts, including but not**
113 **limited to expenses incurred by the trademark owner in the investigation and prosecution**
114 **of the offense as well as the disgorgement of any profits realized by a person convicted of**
115 **such offense.**

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