

104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT

29-006

States. The bill addresses this problem by amending both criminal and civil laws. H.R. 2511 includes trafficking in counterfeit goods or services as predicate offenses subject to the Racketeer Influenced and Corrupt Organizations (RICO) provisions of the criminal code. It also amends civil laws to ensure that imported counterfeits are seized and destroyed and allows trademark owners to opt for judicially determined statutory damages, rather than actual damages.

BACKGROUND AND NEED FOR THE LEGISLATION

Congress recognized that the problem of copyright and trademark counterfeiting was much broader than individual street corner vendors selling watches and handbags when it enacted the Trademark Counterfeiting Act of 1984. While that legislation was a step in the right direction, it has proven to be an inadequate remedy for the explosive growth of criminal commercial counterfeiting. It is estimated that businesses in the United States lose more than \$200 billion a year today because of illegal counterfeiting compared to \$5.5 billion of losses in 1982. Today, between five to eight percent of all goods and services sold worldwide are counterfeit. The problem is especially severe for American computer software developers. The industry estimates that sales of counterfeit software exceed 40% of the industry's total revenues—that is, for every five programs legitimately sold, two illegally pirated copies are also sold.

Ms. Catherine Simmons-Gill, President of the International Trademark Association pointed out in her testimony that counterfeiting of copyrighted and trademarked goods and services costs American industries more than just displaced direct sales. In some cases, it can cost a company its reputation. Counterfeit products are generally made of substandard materials and are rarely of the same quality as the genuine article. They are not subject to any of the stringent quality control standards that a company requires before putting its stamp of approval, its trademark, on the product. An unsuspecting customer who unwittingly buys a counterfeit product is rightfully upset when the shoddy product fails to perform to expectations. Although the customer's anger and disappointment is justified, it is mistakenly directed at the legitimate manufacturer instead of the counterfeiter. In addition to losing the actual sale to the counterfeiter, the company loses any subsequent sales that the disappointed customer might otherwise have made.

Consumer awareness of criminal counterfeiting also damages a company's reputation and reduces sales. Customers are reluctant to buy a particular brand that is known to be counterfeited for fear that they may mistakenly purchase a substandard copy rather than the genuine article. It is simply easier to buy another brand than run that risk. This problem was evident when the Subcommittee sought witnesses to testify at the December 13 hearing on H.R. 2511. Some companies that had experienced significant counterfeiting problems were reluctant to testify because their testimony might have generated publicity, and past acknowledgement of counterfeiting had historically led to significant sales losses. In those cases where the consumer actually intends to buy a cheap counterfeit, the trademark owner suffers significant losses because

of the dilution of its trademark. This is especially true when luxury items, like expensive watches, are counterfeited.

Even more grievous than the enormous economic losses suffered by American companies are the serious health and safety hazards caused by criminal counterfeiting. In one case, more than one million bogus birth control pills had been distributed bearing the false mark of a large pharmaceutical company. The company did not discover the counterfeits until several women complained of pain and unusual bleeding. There have been numerous other cases where name-brand pharmaceuticals, both over-the-counter and prescription, have been counterfeited and distributed. Last year, substandard counterfeited infant formula, bearing the false label of a well known brand, was widely distributed in California and Kentucky. The Food and Drug Administration intervened and issued warnings to consumers in fifteen additional states before the problem was resolved. Ms. Angela Small, Vice President of Legal Affairs at Saban Entertainment testified that toy manufacturers are concerned that cheap knock-offs present choking hazards and may contain toxic paint.

Counterfeit machine parts and brake pads have been linked to fatal automobile, aviation and helicopter crashes. Mr. John Bliss, President of the International Anticounterfeiting Association, testified that federal investigators discovered that more than 600 helicopters that had been sold to NATO and private entities contained counterfeit parts. He also reported instances where counterfeit parts had been discovered in jet engines, bridge joints and fasteners in areas of nuclear facilities responsible for preventing meltdowns.

The enormous profit potential and low risk of prosecution for criminal counterfeiting has made it an increasingly attractive enterprise for organized crime syndicates. In 1993, law enforcement agents raided a warehouse in New York City and discovered a large shipment of designer handbag knockoffs. There were traces of heroin in the lining of the handbags. Apparently, this ring of drug smugglers would smuggle drugs inside the bags, remove and sell the drugs, and then sell the counterfeit handbags. Another example of the connection between organized crime and counterfeiting is the case of David Thai. Mr. Thai, a convicted murderer and former leader of the violent gang Born to Kill claims to have used his gang to operate a counterfeit watch ring that netted nearly \$13 million a year.

Mr. Leonard S. Walton, the Deputy Assistant Commissioner of Investigations for the United States Customs Service, compared the pattern of criminal activity and organizational structure associated with counterfeiting to that of drug trafficking. For three years, Mr. Walton's agents investigated an expansive Korean crime syndicate that operated an enormous counterfeiting operation throughout America. In September 1995, that investigation culminated in coordinated raids in New York City and Los Angeles that netted \$27 million in counterfeit merchandise and resulted in the indictments of 43 members of the crime syndicate. Mr. Walton explained that Section 2 of the bill, which applies RICO provisions in the criminal counterfeiting context, is essential to allow law enforce-

ment agents to take down the entire criminal organization rather than merely react to each crime the organization commits.

Organized crime is not the only source of criminal commercial counterfeiting. In some cases, the source is an otherwise legitimate manufacturer of goods. This category of counterfeiters purchases "seconds" or "rejects" from a manufacturer, applies counterfeit labels, and sells the products as first quality. Another example is where the counterfeiter is a legitimate manufacturer of a low-grade or generic product, but mislabels them as a high-grade brand name product. The provisions of H.R. 2511 are directed toward this lower level opportunistic criminal activity as well as the more egregious cases involving organized crime syndicates.

HEARINGS

The Committee's Subcommittee on Courts and Intellectual Property held a hearing on H.R. 2511 on December 7, 1995 in Room B-352 Rayburn House Office Building. Testimony was received from the following five witnesses: Mr. Philip G. Hampton II, Assistant Commissioner for Trademarks at the Patent and Trademark Office, U.S. Department of Commerce; Mr. Leonard S. Walton, Deputy Assistant Commissioner of the Office of Investigations, United States Customs Service (Mr. Walton did not submit a written statement for the record but did offer responses to questions of the Members); Ms. Catherine Simmons-Gill, President of the International Trademark Association; Ms. Angela Small, Vice President of Legal Affairs for Saban Entertainment, Inc.; and Mr. John Bliss, President of the International Anticounterfeiting Coalition.

COMMITTEE CONSIDERATION

On December 13, 1995, the Subcommittee on Courts and Intellectual Property met in open session and approved the following two amendments to the bill: (1) technical and clarifying changes and (2) the addition of 18 U.S.C. § 2319A to the list of intellectual property violations that are subject to RICO provisions in Section 2 of the original bill. The Subcommittee ordered the bill H.R. 2511, reported as amended, by a voice vote, a quorum being present. On March 12, 1996, the Committee met in open session and ordered the bill H.R. 2511 reported as introduced, by a voice vote, a quorum being present. However, the Committee intends to take up H.R. 2511 on the Suspension Calendar with an amendment to reflect the amendments adopted by the Subcommittee.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2511, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 28, 1996.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2511, the Anticounterfeiting Consumer Protection Act of 1995, as ordered reported by the House Committee on the Judiciary on March 12, 1996. CBO estimates that enacting this legislation would have no significant impact on the federal budget. While the bill could lead to increases in both direct spending and receipts, the amounts involved would be less than \$500,000 a year. Because H.R. 2511 could affect direct spending and receipts, pay-as-you-go procedures would apply.

H.R. 2511 would make several changes to current law that aim to prevent commercial counterfeiting. Violators of certain provisions would be subject to civil or criminal fines, or forfeiture of assets.

Federal Budgetary Impact. Enacting H.R. 2511 could increase governmental receipts from additional fine collections, but we estimate that any such increase would be less than \$500,000 annually. Civil penalties would be recorded in the budget as miscellaneous receipts to the Treasury. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the following year. (Thus, direct spending from the fund would match the increase in revenues with a one-year lag.) Enacting this legislation also could increase governmental receipts from additional forfeitures of criminals' assets, but we estimate that any such increase also would be less than \$500,000 annually in value. Proceeds from the sale of any such assets would be deposited as revenues into the Assets Forfeiture Fund of the Department of Justice and spent out of the fund in the same year. Thus, direct spending from the Assets Forfeiture Fund would match any increase in revenues.

In addition, H.R. 2511 would place some additional record-keeping requirements on the U.S. Customs Service relating to the

entry of imported merchandise. We estimate that this would result in costs of less than \$500,000 a year, subject to appropriations action.

State and Local Government Impact. The bill includes provisions governing the seizure and disposition of vehicles (cars, boats, airplanes) used in the trafficking of counterfeit items. Those provisions would allow a court to order the seizure of such vehicles by a state or local law enforcement officer. Section 4 of the Unfunded Mandates Reform Act of 1995 excludes, from the application of that act, legislative provisions that enforce constitutional rights of individuals. CBO has determined that these provisions fit within that exclusion.

Private Sector Impact. H.R. 2511 would impose new private sector mandates, as defined in Public Law 104–4. Those mandates would increase the paperwork requirements imposed on importers of merchandise produced outside of the United States. However, importers are already required to transmit information on imported merchandise to the U.S. Customs Service, and the additional information that importers would be required to report would not impose a substantial new burden. CBO expects that the additional costs imposed on the private sector would fall well below the \$100 million threshold.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz, for federal costs, and Leo Lex for the state and local government impact, and Matthew Eyles for the private sector impact.

Sincerely,

JUNE E. O'NEILL, *Director*.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2511 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

Section 1 sets for the short title of the bill, the “Anticounterfeiting Consumer Protection Act of 1995.”

Sec. 2. Counterfeiting as racketeering

Section 2 amends 18 U.S.C. §1961 to include certain intellectual property crimes under 18 U.S.C. §§2318–2320¹ as predicate offenses subject to the Racketeer Influenced and Corrupt Organizations (RICO) provisions of the Organized Crime Control Act of 1970. Invoking RICO does not proscribe any conduct that is not already prohibited by the provisions of 18 U.S.C. §§2318–2320, nor does it automatically increase criminal penalties. However, when these offenses are associated with organized crime, RICO expands both criminal and civil consequences. Pursuant to 18 U.S.C. §1963, RICO permits law enforcement agents to seize the nonmonetary

¹ As amended in Section 3 of H.R. 2511.

personal and real estate assets connected with the criminal enterprise in addition to the counterfeit goods. Furthermore, RICO provides for an aggrieved party to pursue civil remedies under 18 U.S.C. § 1964.

Sec. 3. Application to computer programs, computer program documentation, or packaging

Section 3 amends 18 U.S.C. § 2318 to criminalize trafficking in counterfeit copyrighted computer program documentation or packaging or labels affixed or designed to be affixed to copies of copyrighted computer programs. The current provisions of § 2318 are limited to the prohibition of trafficking in counterfeit phonorecord and video labels.

While other industries have experienced problems with counterfeit labels being affixed to their products, it is the considered judgment of the Committee that 18 U.S.C. § 2318 should continue to apply exclusively to copyrighted materials. Unlike other goods, the act of copying a copyrighted product is nearly always a violation of federal law, even before a counterfeit label is affixed to the product. The provisions of 18 U.S.C. § 2318 reflect this problem and recognize its unique occurrence within the copyright context. In addition, the Committee believes that the existence of 18 U.S.C. § 2318 should not preclude a court from imposing the penalties of 18 U.S.C. § 2320 to situations where a defendant is found to have trafficked in counterfeit labels that are to be affixed to otherwise legitimate goods.

Sec. 4. Trafficking in counterfeit goods or services

Section 4 amends 18 U.S.C. § 2320 to require the Attorney General to maintain statistics, on a district-by-district basis, for all actions subject to RICO pursuant to the provisions of Section 2 of the bill. The statistics must include an accounting of: (1) The number of open investigations, (2) the number of cases referred by the U.S. Customs Service, (3) the number of cases referred by other agencies or sources, and (4) the number and outcome of prosecutions under those provisions.

Sec. 5. Seizure of counterfeit goods

Section 5 amends 15 U.S.C. § 1116(d)(9)² to ensure that any federal law enforcement or local law enforcement agent can execute a seizure order in a civil action. Section 5 also grants courts the authority, under certain circumstances, to seize an aircraft, vehicle, or vessel used in connection with a violation of the Lanham Act.

Sec. 6. Disposition of merchandise bearing counterfeit American trademarks and civil penalties

Section 6 inserts a new section, § 34A, to the Lanham Act which requires the seizure and destruction of counterfeit goods imported into the United States. Where the counterfeit goods do not present a health risk and the trademark owner consents, the goods (or proceeds from the sales of the goods) may be distributed to an appro-

²In this report, the Trademark Act of 1946 is referred to by its more commonly used name, the Lanham Act. Section Five amends § 34(d)(9) of the Lanham Act.

appropriate charity or governmental agency. It also provides for the assessment of civil fines against persons who aid in the importation of counterfeit goods that are seized. The amounts of the fines are tied to the retail value of the genuine goods.

Sec. 7. Recovery for violation of rights

Section 7 amends §35 of the Lanham Act to allow trademark owners to opt for judicially determined statutory damages, rather than actual damages and profits, in civil cases.

Sec. 8. Disposition of excluded articles

Section 8 deletes provisions in 17 U.S.C. § 603(c) that have been interpreted to allow seized counterfeit goods to be returned to the importer. Together with Section 6, this provision mandates the destruction of imported counterfeit goods thereby preventing the return of the goods to the counterfeiters for reshipment to another destination.

Sec. 9. Recordkeeping requirements

Section 9 amends §42 of the Lanham Act to allow trademark owners to obtain certain shipping information contained in vessel and aircraft manifests from the appropriate federal agency. It also requires that documentation associated with imported merchandise contain certain information necessary for Customs officials to determine whether the merchandise or packaging bears an infringing trademark.

AGENCY VIEWS

In testimony before the Subcommittee on Courts and Intellectual Property on December 13, 1995, the Assistant Commissioner for Trademarks testified in favor of H.R. 2511 on behalf of the Administration, the Department of Commerce and the Patent and Trademark Office; the United States Customs Service also expressed support of the bill at that hearing. In addition, the Department of Justice expressed support for the bill in a letter to the Chairman of the Subcommittee dated December 20, 1995.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

* * * * *

§ 1961. Definitions

As used in this chapter—

(1) “racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251–2252 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property),, *section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2320 (relating to trafficking in goods or services bearing counterfeit marks) section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traf-*

fic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of that title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act.

* * * * *

CHAPTER 113—STOLEN PROPERTY

* * * * *

§ 2318. Trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works

(a) Whoever, in any of the circumstances described in subsection (c) of this section, knowingly traffics in a counterfeit label affixed or designed to be affixed to a phonorecord, or a copy of a *computer program or computer program documentation or packaging* or a motion picture or other audiovisual work, shall be fined under this title or imprisoned for not more than five years, or both.

(b) As used in this section—

(1) * * *

* * * * *

(3) the terms “copy”, “phonorecord”, “motion picture”, “*computer program*”, and “audiovisual work” have, respectively, the meanings given those terms in section 101 (relating to definitions) of title 17.

(c) The circumstances referred to in subsection (a) of this section are—

(1) * * *

(2) the mail or a facility of interstate or foreign commerce is used or intended to be used in the commission of the offense; or

(3) the counterfeit label is affixed to or encloses, or is designed to be affixed to or enclose, a *copy of a computer program or computer program documentation or packaging*, a copyrighted motion picture or other audiovisual work, or a phonorecord of a copyrighted sound recording.

* * * * *

§ 2320. Trafficking in counterfeit goods or services

(a) * * *

* * * * *

(e) *Beginning with the first year after the date of the enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Depart-*

ment of Justice prepared pursuant to section 522 of title 28, on a district by district basis, for all actions involving trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works (as defined in section 2318 of title 18), criminal infringement of copyrights (as defined in section 2319 of title 18), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of title 18), an accounting of—

- (1) the number of open investigations;
- (2) the number of cases referred by the United States Customs Service;
- (3) the number of cases referred by other agencies or sources; and
- (4) the number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under sections 2318, 2319, and 2320 to title 18.

* * * * *

ACT OF JULY 5, 1946

(Commonly Referred to as the Trademark Act of 1946)

AN ACT To provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.

* * * * *

TITLE VI—REMEDIES

* * * * *

SEC. 34. (a) * * *

* * * * *

(d)(1) * * *

* * * * *

(9) **【**The court shall order that a United States marshal or other law enforcement officer is to serve a copy of the order under this subsection and then is to carry out the seizure under such order.**】** *A court may order the seizure of an aircraft, vehicle, or vessel used in connection with a violation of this Act. The court shall order that service of a copy of the order under this subsection shall be made by a Federal law enforcement officer (such as a United States marshal or an officer or agent of the United States Customs Service, Secret Service, Federal Bureau of Investigation, or the United States Postal Service) or may be made by a State or local law enforcement officer, who, upon making service, shall carry out the seizure under the order.* The court shall issue orders, when appropriate, to protect the defendant from undue damage from the disclosure of trade secrets or other confidential information during the course of the seizure, including, when appropriate, orders restricting the access of the applicant (or any agent or employee of the applicant) to such secrets or information.

* * * * *

SEC. 34A. (a) Any merchandise bearing a counterfeit mark (as defined in section 45) imported into the United States in violation of section 42 shall be seized by the appropriate Federal official and, in the absence of the written consent of the trademark owner, forfeited. Upon seizure of such merchandise, the appropriate official shall notify the owner of the trademark, and shall, after forfeiture, destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the official has the consent of the trademark owner, the appropriate official may obliterate the trademark where feasible and dispose of the goods seized—

(1) by delivery to such Federal, State, and local government agencies as in the opinion of the appropriate official have a need for such merchandise;

(2) by gift to such eleemosynary institutions as in the opinion of the appropriate official have a need for such merchandise; or

(3) more than 1 year after the date of forfeiture, by sale by appropriate officials at public auction, except that before making any such sale the official shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2).

(b)(1) Any person who directs, assists financially or otherwise, or is in any way concerned in the importation of merchandise for sale or public distribution that is seized under subsection (a) shall be subject to a civil fine.

(2) For the first such seizure, the fine shall be equal to the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, as determined under regulations prescribed by the Secretary of the Treasury.

(3) For the second seizure and thereafter, the fine shall be equal to twice the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, as determined under regulations prescribed by the Secretary of the Treasury.

(4) The imposition of a fine under this subsection shall be within the discretion of the court, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law.

SEC. 35. (a) * * *

* * * * *

(c) In a case involving the use of a counterfeit mark (as defined in section 34(d)) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a), an award of statutory damages for any such use in the amount of—

(1) not less than \$500 or more than \$100,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or

(2) if the court finds that the use of the counterfeit mark was willful, not more than \$1,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.

* * * * *

TITLE VII—IMPORTATION FORBIDDEN OF GOODS BEARING
INFRINGING MARKS OR NAMES

SEC. 42. (a) Except as provided in subsection (d) of section 526 of the Tariff Act of 1930, no article of imported merchandise which shall copy or simulate the name of the any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade-mark registered in accordance with the provisions of this Act or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade-marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade-mark, issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade-mark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

(b)(1) *The owner, registrant, or authorized user of a trademark registered under this Act, and any authorized agent or representative thereof, shall be entitled to obtain from the appropriate Federal officers in a timely manner the following information when contained in a vessel or aircraft manifest:*

(A) *The name and address of each importer or consignee and the name and address of the shipper to such importer or consignee, unless the importer or consignee has made a biennial certification, in accordance with procedures adopted by the Secretary of the Treasury, claiming confidential treatment of such information.*

(B) *The general character of the cargo.*

(C) *The number of packages and gross weight.*

(D) *The name of the vessel or aircraft.*

(E) *The port of loading.*

(F) *The port of discharge.*

(G) *The country of origin of the shipment.*

(2) *The documentation relating to the entry into the United States of imported merchandise shall contain such information as may be necessary to determine whether the merchandise bears an infringing*

trademark in violation of subsection (a) or any other applicable law, including a trademark appearing on goods or packaging.

* * * * *

SECTION 603 OF TITLE 17, UNITED STATES CODE

§ 603. Importation prohibitions: Enforcement and disposition of excluded articles

(a) * * *

* * * * *

(c) Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, [as the case may be; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of law.] *as the case may be.*

* * * * *

