

2C:21-32

LEGISLATIVE HISTORY CHECKLIST  
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(Counterfeiting)

NJSA: 2C:21-32

LAWS OF: 1997 CHAPTER: 57

BILL NO: A1589

SPONSOR(S): Bagger & Cohen

DATE INTRODUCED: February 15, 1996

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage denoted  
Second reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 17, 1997

SENATE: January 29, 1997

DATE OF APPROVAL: April 1, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: Statement  
with floor amendments,  
adopted 5-30-96

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:  
REPORTS: No

HEARINGS: No

KBP:pp

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**ASSEMBLY JUDICIARY COMMITTEE**

**STATEMENT TO**

**ASSEMBLY, No. 1589**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 22, 1996

The Assembly Judiciary Committee reports favorably Assembly Bill No. 1589.

This bill establishes a specific criminal offense of counterfeiting. The bill makes it a crime ranging from the fourth to second degree to purposely manufacture, use, display, advertise, distribute, offer for sale, sell, or possess with intent to sell or distribute any item, or services, bearing, or identified by, a counterfeit mark. The bill grades the offense depending on one of three possible factors: the number of items bearing the counterfeit mark; the total retail value of the items involved or whether the offense is a first, second or third or subsequent conviction. The bill provides for enhanced fines for persons convicted depending on the retail value of the items involved.

The bill provides that all items bearing a counterfeit mark and all items used in connection with the violation shall be subject to forfeiture as provided in the criminal code.

Conviction under this bill for a criminal offense shall not preclude the defendant's potential liability for civil damages under N.J.S.A.56:3-13.16.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 1589

with committee amendments

# STATE OF NEW JERSEY

DATED: DECEMBER 16, 1996

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1589 (1R).

This bill would establish counterfeiting as a specific criminal offense in New Jersey. This offense would prohibit the intentional manufacture, use, display, advertisement, distribution, sale or possession with intent to sell goods or services bearing or identified by a counterfeit trademark. This bill would grade counterfeiting as a crime of the second, third or fourth degree dependent on the following factors: the number of items bearing the counterfeit mark; the total retail value of the items involved, or whether the offense is a first, second or third or subsequent conviction. The bill would provide enhanced fines for persons convicted of counterfeiting based on the retail value of the items involved.

The bill provides that all items bearing a counterfeit mark and all items used in connection with counterfeiting would be subject to forfeiture.

The amendments were technical in nature and clarified the sentencing provisions of the bill.

**ASSEMBLY AMENDMENTS**  
(Proposed By Assemblyman BAGGER)

to

**ASSEMBLY, No. 1589**

(Sponsored By Assemblymen BAGGER and COHEN)

_____	Speaker
_____	Clerk (3)
_____	Majority Leader
_____	Minority Leader
_____	Sponsor of Act
_____	Sponsor of Bill

**REPLACE SECTION 1 TO READ:**

1. a. This act shall be known and may be cited as the "New Jersey Trademark Counterfeiting Act."

b. As used in this act:

(1) "Counterfeit mark" means<sup>1</sup>:

(a) any unauthorized reproduction or copy of intellectual property;

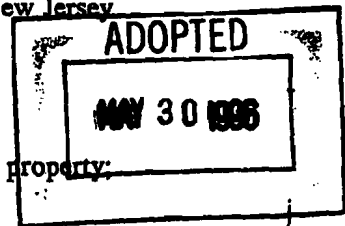
or

(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, device, design, or word adopted or used by a person to identify such person's goods or services] a spurious mark that is identical with or substantially indistinguishable from a genuine mark that is registered on the principal register in the United States Patent and Trademark Office or registered in the New Jersey Secretary of State's office; and that is used or is intended to be used on, or in conjunction with, goods or services for which the genuine mark is registered and in use<sup>1</sup>.

<sup>1</sup>[(3)] (2)<sup>1</sup> "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.

<sup>1</sup>[(4) "Service mark" means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Service mark includes titles, character names used by a person, and other distinctive features of radio or television programs, notwithstanding that they, or the programs, advertise the goods of the sponsor.]<sup>1</sup>



'[(5) "Trademark" means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the goods of the person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.]'

'[(6) "Trade name" means any name used by a person to identify a business or vocation of the person. ]'

c. A person commits the offense of counterfeiting who ~~'[purposefully] with the intent to deceive or defraud some other person. knowingly'~~ manufactures, uses, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute ~~'within, or in conjunction with commercial activities within New Jersey.'~~ any item, or services, bearing, or identified by, a counterfeit mark.

A person who has in his possession or under his control more than 25 items bearing a counterfeit mark shall be presumed to have violated this section.

d. (1) An offense set forth in this act shall be punishable as a crime of the fourth degree if:

the offense involves fewer than 100 items bearing a counterfeit mark;

the offense involves a total retail value of less than \$1,000.00 for all items bearing, or services identified by, a counterfeit mark; or

the offense involves a first conviction under this act.

(2) An offense set forth in this act shall be punishable as a crime of the third degree if:

the offense involves more than 100 but fewer than 1,000 items bearing a counterfeit mark ;

the offense involves a total retail value of more than \$1,000.00 but less than \$15,000.00 of all items bearing, or services identified by , a counterfeit mark; or

the offense involves a second conviction under this act.

(3) An offense set forth in this act shall be punishable as a crime of the second degree if:

the offense involves 1000 or more items bearing a counterfeit mark:

the offense involves a total retail value of \$75,000.00 or more of all items bearing, or services identified by a counterfeit mark;

the offense involves a third or subsequent conviction under this act.

In addition, any person convicted under this act , notwithstanding the provisions of N.J.S.2C:43-3, shall be fined by the court an amount up to threefold the retail value of the items or services involved, providing that the fine imposed shall not exceed the following amounts; for a crime of the fourth degree, \$100,000.00; for a crime of the third degree, \$250,000.00, and for a crime of the second degree, \$500,000.00.

e. All 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 subject to forfeiture in accordance with the procedures set forth in chapter 64 of Title 2C of the New Jersey Statutes.

f. For purposes of this act:

(1) 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, uses, displays, advertises, distributes, offers for sale, sells or possesses;

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

g. Conviction for an offense under this act does not preclude the defendant's liability for the civil remedy available pursuant to section 2 of P.L.1987, c.454 (C.56:3-13.16).<sup>v</sup>

#### **STATEMENT**

These floor amendments change the definition of "counterfeit mark" for purposes of this bill and eliminate certain other definitions as unnecessary. The floor amendments also revise the language in subsection c. concerning the offense itself to provide that a person convicted must intend to deceive or defraud someone else and must manufacture, sell, advertise, distribute or possess within this State or in conjunction with commercial activities within this State.

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1996

By Assemblyman BAGGER

1 AN ACT concerning criminal offenses involving counterfeit marks and  
2 supplementing Title 2C of the New Jersey Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. a. This act shall be known and may be cited as the "New Jersey  
8 Trademark Counterfeiting Act."

9 b. As used in this act:

10 (1) "Counterfeit mark" means:

11 (a) any unauthorized reproduction or copy of intellectual property;

12 or

13 (b) intellectual property affixed to any item knowingly sold, offered  
14 for sale, manufactured, or distributed, or identifying services offered  
15 or rendered, without the authority of the owner of the intellectual  
16 property.

17 (2) "Intellectual property" means any trademark, service mark,  
18 trade name, label, term, device, design, or word adopted or used by a  
19 person to identify such person's goods or services.

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

26 (4) "Service mark" means any word, name, symbol, or device, or  
27 any combination thereof, used by a person to identify and distinguish  
28 the services of one person, including a unique service, from the  
29 services of others, and to indicate the source of the services, even if  
30 that source is unknown. Service mark includes titles, character names  
31 used by a person, and other distinctive features of radio or television  
32 programs, notwithstanding that they, or the programs, advertise the  
33 goods of the sponsor.

34 (5) "Trademark" means any word, name, symbol, or device, or any  
35 combination thereof, used by a person to identify and distinguish the  
36 goods of the person, including a unique product, from those  
37 manufactured and sold by others, and to indicate the source of the

1 goods, even if that source is unknown.

2 (6) "Trade name" means any name used by a person to identify a  
3 business or vocation of the person.

4 c. A person commits the offense of counterfeiting who purposely  
5 manufactures, uses, displays, advertises, distributes, offers for sale,  
6 sells, or possesses with intent to sell or distribute any item, or services,  
7 bearing, or identified by, a counterfeit mark.

8 A person who has in his possession or under his control more than  
9 25 items bearing a counterfeit mark shall be presumed to have violated  
10 this section.

11 d. (1) An offense set forth in this act shall be punishable as a crime  
12 of the fourth degree if:

13 the offense involves fewer than 100 items bearing a counterfeit  
14 mark;

15 the offense involves a total retail value of less than \$1,000.00 for  
16 all items bearing, or services identified by, a counterfeit mark; or

17 the offense involves a first conviction under this act.

18 (2) An offense set forth in this act shall be punishable as a crime of  
19 the third degree if:

20 the offense involves more than 100 but fewer than 1,000 items  
21 bearing a counterfeit mark ;

22 the offense involves a total retail value of more than \$1,000.00 but  
23 less than \$15,000.00 of all items bearing, or services identified by , a  
24 counterfeit mark; or

25 the offense involves a second conviction under this act.

26 (3) An offense set forth in this act shall be punishable as a crime  
27 of the second degree if:

28 the offense involves 1000 or more items bearing a counterfeit mark:

29 the offense involves a total retail value of \$75,000.00 or more of all  
30 items bearing, or services identified by a counterfeit mark;

31 the offense involves a third or subsequent conviction under this act.

32 In addition, any person convicted under this act , notwithstanding  
33 the provisions of N.J.S.2C:43-3, shall be fined by the court an amount  
34 up to threefold the retail value of the items or services involved,  
35 providing that the fine imposed shall not exceed the following  
36 amounts; for a crime of the fourth degree, \$100,000.00; for a crime of  
37 the third degree, \$250,000.00; and for a crime of the second degree,  
38 \$500,000.00.

39 e. All items bearing a counterfeit mark, and all personal property,  
40 including but not limited to, any items, objects, tools, machines,  
41 equipment, instrumentalities or vehicles of any kind, employed or used  
42 in connection with a violation of this act, shall be subject to forfeiture  
43 in accordance with the procedures set forth in chapter 64 of Title 2C  
44 of the New Jersey Statutes.

45 f. For purposes of this act:

46 (1) the quantity or retail value of items or services shall include the



1 aggregate quantity or retail value of all items bearing, or services  
2 identified by, every counterfeit mark the defendant manufactures, uses,  
3 displays, advertises, distributes, offers for sale, sells or possesses;

4 (2) any State or federal certificate of registration of any intellectual  
5 property shall be prima facie evidence of the facts stated therein.

6 g. Conviction for an offense under this act does not preclude the  
7 defendant's liability for the civil remedy available pursuant to section  
8 2 of P.L.1987, c.454 (C.56:3-13.16).

9

10 2. This act shall take effect immediately .

11

12

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#### STATEMENT

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15 This bill establishes a specific criminal offense of counterfeiting.  
16 The bill makes it a crime ranging from the fourth to second degree to  
17 willingly manufacture, use, display, advertise, distribute, offer for sale,  
18 sell, or possess with intent to sell or distribute any item, or services,  
19 bearing , or identified by, a counterfeit mark. The bill grades the  
20 offense depending on one of three possible factors: the number of  
21 items bearing the counterfeit mark; the total retail value of the items  
22 involved or whether the offense is a first, second or third or  
23 subsequent conviction. The bill provides for enhanced fines for  
24 persons convicted depending on the retail value of the items involved.

25 The bill provides that all items bearing a counterfeit mark and all  
26 items used in connection with the violation shall be subject to  
27 forfeiture as provided in the criminal code.

28 Conviction under this bill for a criminal offense shall not preclude  
29 the defendant's potential liability for civil damages under  
30 N.J.S.A. 56:3-13.16.

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35 Establishes the criminal offense of trademark counterfeiting.