
ENGROSSED HOUSE BILL 1007

State of Washington

56th Legislature

1999 Regular Session

By Representatives Ballasiotes, O'Brien, Radcliff, Benson, Quall, Mitchell, Cairnes and Morris

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1 AN ACT Relating to counterfeiting; amending RCW 9.16.030 and
2 9.16.040; adding new sections to chapter 9.16 RCW; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.16 RCW
6 to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Counterfeit mark" means:

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

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

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

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

7 **Sec. 2.** RCW 9.16.030 and 1909 c 249 s 344 are each amended to read
8 as follows:

9 Every person who ~~((shall))~~ manufactures, advertises, distributes,
10 uses, or displays, or ~~((have))~~ has in his or her possession with intent
11 to use ~~((or))~~ display, or sell, the genuine label, trademark, term,
12 design, device, or form of advertisement of any person, corporation,
13 association, or union, lawfully filed for record in the office of the
14 secretary of state, or the exclusive right to use which is guaranteed
15 to any person, corporation, association, or union, by the laws of the
16 United States, without the written authority of such person,
17 corporation, association, or union, or who ~~((shall))~~ willfully forges
18 ~~((or))~~ counterfeits ~~((or))~~ uses, or displays, or ~~((have))~~ has in his
19 or her possession with intent to use or display, any representation,
20 likeness, similitude, copy, or imitation of any genuine label,
21 trademark, term, design, device, or form of advertisement, so filed or
22 protected, or any die, plate, stamp, or other device for manufacturing
23 the same, ~~((shall be))~~ is guilty of ~~((a gross misdemeanor))~~
24 counterfeiting.

25 Any state or federal certificate of registration of any
26 intellectual property is prima facie evidence of the facts stated
27 therein.

28 **Sec. 3.** RCW 9.16.040 and 1909 c 249 s 345 are each amended to read
29 as follows:

30 Every person who ~~((shall))~~ knowingly sells, displays, or
31 advertises, or ~~((have))~~ has in his or her possession with intent to
32 sell, any goods, wares, merchandise, mixture, preparation, or compound
33 having affixed thereto any label, trademark, term, design, device, or
34 form of advertisement lawfully filed for record in the office of the
35 secretary of state by any person, corporation, association, or union,
36 or the exclusive right to the use of which is guaranteed to such
37 person, corporation, association, or union under the laws of the United

1 States, which label, trademark, term, design, device, or form of
2 advertisement (~~shall have been~~) is used or affixed thereto without
3 the written authority of such person, corporation, association, or
4 union, or having affixed thereto any forged or counterfeit
5 representation, likeness, similitude, copy, or imitation thereof,
6 (~~shall be~~) is guilty of (~~a misdemeanor~~) counterfeiting.

7 Any state or federal certificate of registration of any
8 intellectual property is prima facie evidence of the facts stated
9 therein.

10 NEW SECTION. Sec. 4. A new section is added to chapter 9.16 RCW
11 to read as follows:

12 (1) Counterfeiting is a misdemeanor, except as provided in
13 subsections (2) and (3) of this section.

14 (2) Counterfeiting is a gross misdemeanor if:

15 (a) The defendant has previously been convicted under this section;
16 or

17 (b) The violation involves more than one hundred but fewer than one
18 thousand items bearing a counterfeit mark or the total retail value of
19 all items bearing a counterfeit mark or the total retail value of all
20 items bearing, or services identified by, a counterfeit mark is more
21 than one thousand dollars but less than ten thousand dollars.

22 (3) Counterfeiting is a class C felony if:

23 (a) The defendant has been previously convicted of two or more
24 offenses under this section;

25 (b) The violation involves the manufacture or production of items
26 bearing counterfeit marks; or

27 (c) The violation involves one thousand or more items bearing a
28 counterfeit mark or the total retail value of all items bearing, or
29 services identified by, a counterfeit mark is ten thousand dollars or
30 more.

31 (4) For purposes of this section, the quantity or retail value of
32 items or services shall include the aggregate quantity or retail value
33 of all items bearing, or services identified by, every counterfeit mark
34 the defendant manufactures, uses, displays, advertises, distributes,
35 possesses, or possesses with intent to sell.

36 (5) A person guilty of counterfeiting shall be fined an amount up
37 to three times the retail value of the items bearing, or services

1 identified by, a counterfeit mark, unless extenuating circumstances are
2 shown by the defendant.

3 (6) The penalties provided for in this section are cumulative and
4 do not affect any other civil and criminal penalties provided by law.

5 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.16 RCW
6 to read as follows:

7 (1) Any items bearing a counterfeit mark, and all personal property
8 employed or used in connection with counterfeiting, including but not
9 limited to, any items, objects, tools, machines, equipment,
10 instruments, or vehicles of any kind, shall be seized by any law
11 enforcement officer.

12 All seized personal property referenced in this subsection shall be
13 forfeited in accordance with RCW 10.105.010.

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

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

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