

SENATE BILL REPORT

SB 6577

As of February 1, 2008

Title: An act relating to truth in music advertising.

Brief Description: Providing for truth in music advertising.

Sponsors: Senators Weinstein, Hatfield, Rockefeller and Kohl-Welles.

Brief History:

Committee Activity: Consumer Protection & Housing:

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Staff: Vanessa Firnhaber-Baker (786-7471)

Background: A service mark is a word, phrase, symbol, or combination of words, phrases, or symbols that identify and distinguish the source of a service. The name of a musical recording or performing group could be a service mark.

Service marks are protected intellectual property. Service marks may, but are not required to be, registered with the U.S. Patent and Trademark Office and/or with the Washington Secretary of State. Registration provides certain advantages, including: (1) constructive notice to the public that the registrant owns the mark; and (2) a legal presumption that the registrant owns the mark and has exclusive right to use it. Ownership of a service mark may arise from use, registration, or both. A service mark owner may prevent others from using the mark for the same or similar service. An owner may also prevent others from using the mark for other services or products if such use could be confusing to consumers.

A service mark owner may lose his or her rights to the exclusive use of a service mark if he or she abandons the service mark. Abandonment may be shown by the owner having notice of another using the service mark and failing to take action to stop the infringement.

To disseminate advertising in any form that is deceptive or misleading is a misdemeanor.

Summary of Bill: Promoting or conducting a live musical performance through advertising that claims or implies an affiliation between the performing musical group and a recording group is prohibited unless any of the following apply:

- the performance group is the owner and federal registrant of the service mark used;
- at least one member of the performing group was previously a member of the recording group and has a legal right to use the name of or affiliation to the recording group;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- the performance is promoted as a tribute to the recording group and the performance group's name is not so similar to the recording's group so as to mislead the public;
- the recording group authorized the performance; or
- the performance is not taking place in Washington.

Anyone who violates this prohibition is liable for a civil penalty of up to 2,500 dollars per violation. An action for the civil penalty or other injunctive relief may be brought by the Attorney General or a city or county prosecutor.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There are imposters who perform and pretend to be the real band that recorded the hit music; they mislead the public. Only the original musicians, who have a right to use the band's name, should be able to perform under its name.

Persons Testifying: PRO: Gretchen Christopher a.k.a. Gretchen C. Matzen, The Fleetwoods and Gold Cup Music.