

George W. Bush Presidential Library

Collection: Executive Clerk, Office of the

Series: Saunders, G. Timothy (Tim) – Bill Files

Folder Title: 02/08/2002 [S. 1888] [771111]

Withdrawn/Redacted Material

The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Barcode Scanning Sheet	Technical Correction to Protect Olympic Trademarks	1	11/14/2008	b2;
002	Press Release	[Draft re: H. R. 1888]	1	02/08/2002	P5;

COLLECTION TITLE:

Executive Clerk, Office Of the

SERIES:

Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:

02/08/2002 [S. 1888] [771111]

FRC ID:

6358

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

LAW_M

771111

FG006-01

Barcode Scanning Sheet



Collection Code: **SECLOG**

Staff Name:

Document Date:

Correspondent: **TIM SAUNDERS**

Subject/Description: **OVERSIZE ATTACHMENT # 9465 NARA # 9356 BOX 1
FOLDER 3B BILL FILL RECEIVED FROM THE OFFICE OF
THE EXECUTIVE CLERK - FEB 08 02 ENROLLED BILL S.
1888 - TECHNICAL CORRECTION TO PROTECT OLYMPIC
TRADEMARKS**



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

02 FEB 7 PM 5:33

THE DIRECTOR

February 7, 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 1888 - Technical Correction to Protect Olympic Trademarks
Sponsors - Sen. Stevens (R) Alaska and 4 cosponsors

Last Day for Action

February 19, 2002 - Tuesday

THE PRESIDENT HAS SEEN
2-7-02

Purpose

Corrects a drafting error in the criminal code concerning the unauthorized use of Olympic-related symbols.

Agency Recommendations

Office of Management and Budget

Approval

Department of Justice

Approval

Department of Commerce

Approval (Informally)

Department of the Treasury

No objection (Informally)

Discussion

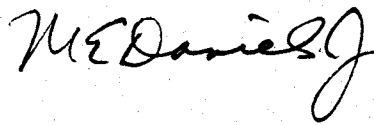
S. 1888 is intended to correct a drafting error in the Federal Criminal Code (title 18 of the U.S. Code) concerning the protection of certain words and symbols reserved for the exclusive use of the United States Olympic Committee (USOC). Section 220506 of title 36 of the U.S. Code gives the USOC exclusive rights to the use of words and symbols related to the Olympic Games, the Paralympic Games, and the Pan American Games. Section 2320 of title 18 of the U.S. Code provides for Federal criminal prosecutions of those who intentionally traffic or attempt to traffic in counterfeit goods or services. However, the necessary cross-reference in section 2320 to establish criminal penalties for unauthorized use of the protected words and symbols noted above mistakenly references section 220706 of title 36, instead of section 220506.

According to Senate floor debate in December 2001, "[t]his error went unnoticed until recently when U.S. Customs officials brought it to the attention of Salt Lake Olympic Committee and USOC attorneys in a discussion of enforcing trademark protections associated with the upcoming Olympic Winter Games."

Conclusion and Recommendations

Justice recommends approval of the enrolled bill. In its views letter, Justice states, "[w]ith the 2002 Winter Olympic Games taking place in Salt Lake City, an increase is expected in the level of trafficking in counterfeit Olympic-related goods and services . . . To allow for criminal prosecution for counterfeit Olympic-related goods, it is necessary to amend [title 18] to correct the existing typographical error."

We join Justice and Commerce in recommending approval of S. 1888, which passed the Senate by unanimous consent and the House by a vote of 413-0.

A handwritten signature in black ink, reading "ME Daniels Jr", with a stylized flourish at the end.

Mitchell E. Daniels, Jr.
Director

Enclosures



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 7, 2002

The Honorable Mitchell E. Daniels, Jr.
Director
Office of Management and Budget
Washington, DC 20503

Dear Mr. Daniels:

This responds to your request for the views and recommendation of the Department of Justice on enrolled bill S. 1888, "[t]o amend title 18 of the United States Code to correct a technical error in the codification of title 36 of the United States Code."

With the 2002 Winter Olympic Games taking place in Salt Lake City, an increase is expected in the level of trafficking in counterfeit Olympics-related goods and services. 18 U.S.C. § 2320 is the primary basis for federal criminal prosecutions of those who traffic in counterfeit goods. Due to a typographical error contained in the current version of section 2320(e)(1)(B), however, section 2320 currently does not cross-reference the correct section of title 36, United States Code (§ 220506, pertaining to the protection of Olympics-related marks) but, rather, cross-references an unrelated section of title 36 (§ 220706). Therefore, section 2320 does not provide criminal penalties for trafficking in counterfeit Olympics-related goods, although it is clear that Congress intended for section 2320 to apply to this type of counterfeiting.

To allow for criminal prosecution for counterfeit Olympics-related goods, it is necessary to amend 18 U.S.C. § 2320(e)(1)(B) to correct the existing typographical error. The enrolled bill would correct the typographical error contained in section 2320. As a consequence, we support the bill's enactment and recommend that the President approve it.

Thank you for soliciting our views on this matter. If we may be of additional assistance, we trust that you will not hesitate to call upon us.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

107TH CONGRESS
2D SESSION

S. 1888

IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 2002

Referred to the Committee on the Judiciary

AN ACT

To amend title 18 of the United States Code to correct a technical error in the codification of title 36 of the United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TECHNICAL CORRECTION OF ERROR IN THE**
4 **CODIFICATION OF TITLE 36.**

5 Section 2320(e)(1)(B) of title 18, United States
6 Code, is amended by striking “section 220706 of title 36”
7 and inserting “section 220506 of title 36”.

Passed the Senate December 20 (legislative day, December 18), 2001.

Attest:

JERI THOMSON,

Secretary.

Original 2-6-02
She is taking this memo
& the Bill on the
Road w/ her Friday
morning

Debi

Document Originally
Attached to
Following Page

505527



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

February 7, 2002

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 1888 - Technical Correction to Protect Olympic Trademarks
Sponsors - Sen. Stevens (R) Alaska and 4 cosponsors

Last Day for Action

February 19, 2002 - Tuesday

Purpose

Corrects a drafting error in the criminal code concerning the unauthorized use of Olympic-related symbols.

Agency Recommendations

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Approval

Department of Justice

Approval

Department of Commerce

Approval (Informally)

Department of the Treasury

No objection (Informally)

Discussion

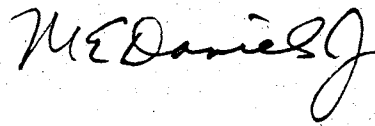
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A handwritten signature in black ink, appearing to read "MEDanielsJr", written in a cursive style.

Mitchell E. Daniels, Jr.
Director

Enclosures

Bills Received at the White House

02 FEB 7 PM 5:31

Date received and
notification to OMB: 2/7/2002
Last day for action: 2/19/2002

Official Title

An Act to amend title 18 of the United States Code to correct a technical error in the codification of title 36 of the United States Code.

505527

S.1888

MEMORANDUM FOR THE PRESIDENT

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Director

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Press Release	[Draft re: H. R. 1888]	1	02/08/2002	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Executive Clerk, Office Of the

SERIES:

Saunders, G. Timothy (Tim) - Bill Files

FOLDER TITLE:

02/08/2002 [S. 1888] [771111]

FRC ID:

6358

OA Num.:

9465

NARA Num.:

9356

RESTRICTION CODES

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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One Hundred Seventh Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Wednesday,
the twenty-third day of January, two thousand and two*

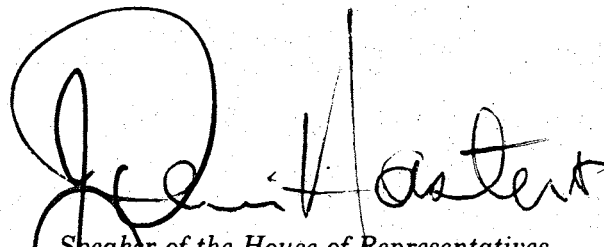
An Act

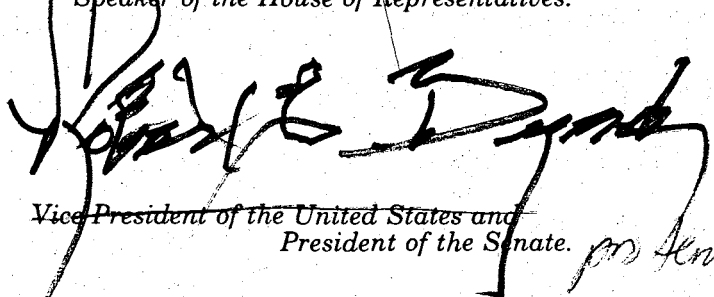
To amend title 18 of the United States Code to correct a technical error in the
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*Be it enacted by the Senate and House of Representatives of
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**SECTION 1. TECHNICAL CORRECTION OF ERROR IN THE CODIFICA-
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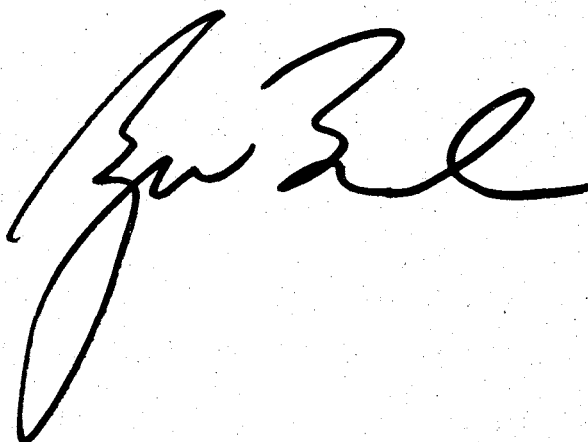
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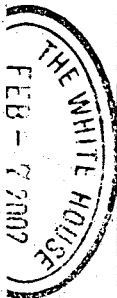

Speaker of the House of Representatives.


Vice President of the United States and
President of the Senate. *pro tempore*

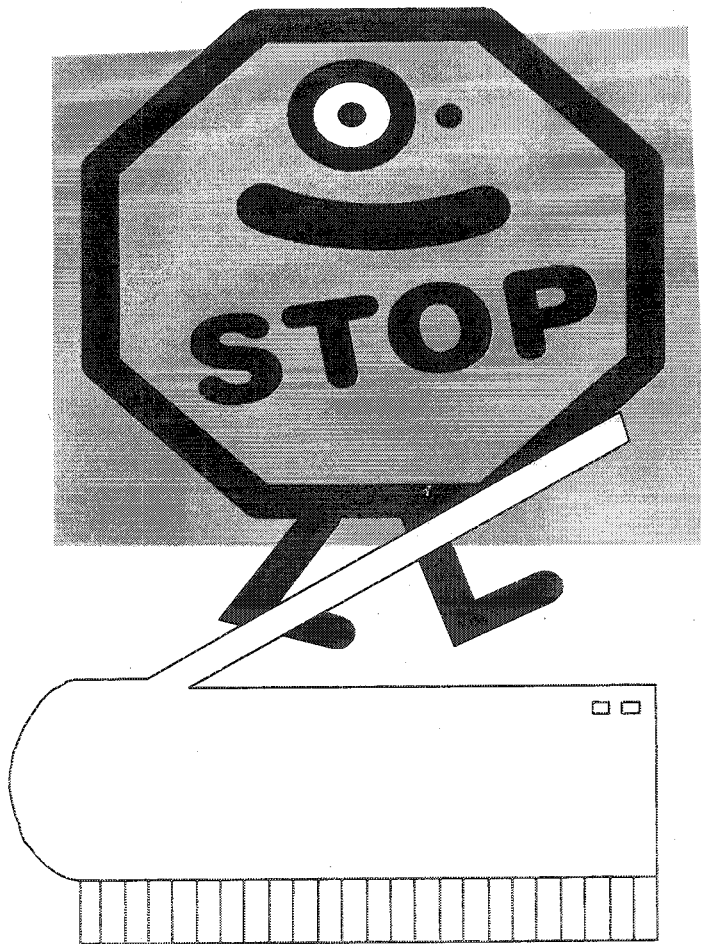
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Remainder of case not scanned

**Executive Office
of the President Library**

EISENHOWER EXECUTIVE OFFICE BUILDING

ROOM 308

5-7000

TO: Sherman

ROOM: _____ DATE: 2/7/02

☒ PER YOUR REQUEST

☐ FOR YOUR INFORMATION

YOUR SHORTCUT TO INFORMATION

MESSAGE:

FROM: Karen Kaufman

S. 1888

Document Originally
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Following Page

18 § 2319A

Note 1

quirement. U.S. v. Moghadam, C.A.11 (Fla.) 1999, 175 F.3d 1269, 50 U.S.P.Q.2d 1801, rehearing and rehearing en banc

denied 193 F.3d 525, certiorari denied 120 S.Ct. 1529.

CRIMES Part 1

Ch. 113 STOLEN

§ 2320. Trafficking in counterfeit goods or services

(a) Whoever intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services shall, if an individual, be fined not more than \$2,000,000 or imprisoned not more than 10 years, or both, and if a person other than an individual, be fined not more than \$5,000,000. In the case of an offense by a person under this section that occurs after that person is convicted of another offense under this section, the person convicted, if an individual, shall be fined not more than \$5,000,000 or imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(b) Upon a determination by a preponderance of the evidence that any articles in the possession of a defendant in a prosecution under this section bear counterfeit marks, the United States may obtain an order for the destruction of such articles.

(c) All defenses, affirmative defenses, and limitations on remedies that would be applicable in an action under the Lanham Act shall be applicable in a prosecution under this section. In a prosecution under this section, the defendant shall have the burden of proof, by a preponderance of the evidence, of any such affirmative defense.

(d)(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Persons permitted to submit victim impact statements shall include—

(A) producers and sellers of legitimate goods or services affected by conduct involved in the offense;

(B) holders of intellectual property rights in such goods or services; and

(C) the legal representatives of such producers, sellers, and holders.

(e) For the purposes of this section—

(1) the term "counterfeit mark" means—

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S.Ct. 1529.

goods or services

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(A) a spurious mark—

(i) that is used in connection with trafficking in goods or services;

(ii) that is identical with, or substantially indistinguishable from, a mark registered for those goods or services on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered; and

(iii) the use of which is likely to cause confusion, to cause mistake, or to deceive; or

(B) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of the Lanham Act are made available by reason of section 220706 of title 36;

but such term does not include any mark or designation used in connection with goods or services of which the manufacturer or producer was, at the time of the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;

(2) the term "traffic" means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent so to transport, transfer, or dispose of; and

(3) the term "Lanham Act" means the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 et seq.).

(f) Beginning with the first year after the date of enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, an accounting, on a district by district basis, of the following with respect to all actions taken by the Department of Justice that involve 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), unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances (as defined in section 2319A of title 18), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of title 18):

(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.

(4) The number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under sections 2318, 2319, 2319A, and 2320 of title 18.

(Added Pub.L. 98-473, Title II, § 1502(a), Oct. 12, 1984, 98 Stat. 2178, and amended Pub.L. 103-322, Title XXXII, § 320104(a), Title XXXIII, § 330016(1)(U), Sept. 13, 1994, 108 Stat. 2110, 2148; Pub.L. 104-153, § 5, July 2, 1996, 110 Stat. 1387; Pub.L. 105-147, § 2(f), Dec. 16, 1997, 111 Stat. 2679; Pub.L. 105-225, § 4(b), Aug. 12, 1998, 112 Stat. 1499; Pub.L. 105-354, § 2(c), Nov. 3, 1998, 112 Stat. 3244.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1984 Acts. House Report No. 98-1030 and House Conference Report No. 98-1159, see 1984 U.S. Code Cong. and Adm. News, p. 3182.

1994 Acts. House Report Nos. 103-324 and 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

1996 Acts. House Report No. 104-556, see 1996 U.S. Code Cong. and Adm. News, p. 1074.

1998 Acts. House Report No. 105-326, see 1998 U.S. Code Cong. and Adm. News, p. 381.

References in Text

The Lanham Act, referred to in subsecs. (c), (d)(1)(B), (3), of this section, is Act July 5, 1946, c. 540, 60 Stat. 427, which is classified generally to chapter 22 (section 1051 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1051 of Title 15 and Tables.

Date of enactment of this subsection, referred to in subsec. (f), is the date of enactment of Pub.L. 104-153, which was approved July 2, 1996.

Amendments

1998 Amendments. Subsec. (e). Pub.L. 105-225, § 4(b), substituted "section 220706 of title 36" for "section 110 of the Olympic Charter Act" in cl. (1)(B); added "and" after the semicolon, in cl. (2); substituted a period for "; and", in cl. (3); and struck out cl. (4). Prior to repeal, cl. (4) read as follows: "the term 'Olympic Charter Act' means

the Act entitled 'An Act to incorporate the United States Olympic Association', approved September 21, 1950 (36 U.S.C. 371 et seq.)." These amendments by section 4(b) of Pub.L. 105-225, which were directed to be applied to subsec. (d) of this section, were executed to subsec. (e) of this section, to reflect the probable intent of Congress. See 1997 Amendments note set out under this section.

Pub.L. 105-354, § 2(b)(1), amended the directory language of Pub.L. 105-225, § 4(b) by substituting "2320(e)" for "2320(d)", requiring no change in text.

1997 Amendments. Subsec. (d). Pub.L. 105-147, § 2(f)(2), added subsec. (d). Former subsec. (d) redesignated as (e).

Subsec. (e), (f). Pub.L. 105-147, § 2(f)(1), redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1996 Amendments. Subsec. (e). Pub.L. 104-153, § 5, added subsec. (e).

1994 Amendments. Subsec. (a). Pub.L. 103-322, § 320104(a)(1), in the first sentence substituted "\$2,000,000 or imprisoned not more than 10 years" for "\$250,000 or imprisoned not more than five years" and "\$5,000,000" for "\$1,000,000".

Pub.L. 103-322, § 320104(a)(2), in the second sentence substituted "\$5,000,000 or imprisoned not more than 20 years" for "\$1,000,000 or imprisoned not more than fifteen years" and "\$15,000,000" for "\$5,000,000".

Pub.L. 103-322, § 330016(1)(U), directed that "under this title" be substitut-

ed for "not more than 10 years" in amendment could not be made pursuant to section 320104(a)(1) of Pub.L. 103-322.

"Contraband" defined in section 103-322, Title XXXII, § 320104(a), Title XXXIII, § 330016(1)(U), Sept. 13, 1994, 108 Stat. 2110, 2148; Pub.L. 104-153, § 5, July 2, 1996, 110 Stat. 1387; Pub.L. 105-147, § 2(f), Dec. 16, 1997, 111 Stat. 2679; Pub.L. 105-225, § 4(b), Aug. 12, 1998, 112 Stat. 1499; Pub.L. 105-354, § 2(c), Nov. 3, 1998, 112 Stat. 3244.)

FEI

See Federal Senten

American Digest System
Trade Regulation
Key Number System

Encyclopedias
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Extortion, Blackma

Law Review and Journ
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Texts and Treatises
Trademarks, 32 F

See WESTLAW g

Authorized use 4
Counterfeit marks 1
Indictment 5
Knowledge 3
Likelihood of confus
Restitution 7
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1. Counterfeit mar
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counterfeit product,
mark" within mean

red by the United States Customs and Border Protection, and by other agencies or sources, including settlements, sentences, of all prosecutions brought, and 2320 of title 18.

Oct. 12, 1984, 98 Stat. 2178, and XII, § 320104(a), Title XXXIII, 2110, 2148; Pub.L. 104-153, § 5, 147, § 2(f), Dec. 16, 1997, 111 Stat. 2, 1998, 112 Stat. 1499; Pub.L. 104-144.)

TUTORY NOTES

Act entitled 'An Act to incorporate the United States Olympic Association', approved September 21, 1950 (36 U.S.C. et seq.). These amendments by section 4(b) of Pub.L. 105-225, which were executed to be applied to subsec. (d) of this section, were executed to subsec. (e) of this section, to reflect the probable intent of Congress. See 1997 Amendments note set out under this section.

Pub.L. 105-354, § 2(b)(1), amended the extortory language of Pub.L. 105-225, (b) by substituting "2320(e)" for "20(d)", requiring no change in text.

1997 Amendments. Subsec. (d). Pub.L. 105-147, § 2(f)(2), added subsec. Former subsec. (d) redesignated as

subsec. (e), (f). Pub.L. 105-147, § 2(f)(1), redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1996 Amendments. Subsec. (e). Pub.L. 104-153, § 5, added subsec. (e).

1994 Amendments. Subsec. (a). Pub.L. 103-322, § 320104(a)(1), in the sentence substituted "\$2,000,000 or imprisoned not more than 10 years" for "0,000 or imprisoned not more than 10 years" and "\$5,000,000 for 0,000,000".

Pub.L. 103-322, § 320104(a)(2), in the sentence substituted "\$5,000,000 or imprisoned not more than 20 years" for "\$1,000,000 or imprisoned not more than fifteen years" and "\$15,000,000 for 0,000,000".

Pub.L. 103-322, § 330016(1)(U), directed that "under this title" be substitut-

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ed for "not more than \$250,000". Amendment could not be executed in view of earlier deletion of "\$250,000" pursuant to section 320104(a)(1)(A) of Pub.L. 103-322.

Effective and Applicability Provisions

1998 Acts. Section 2(c) of Pub.L. 105-354 provided in part that amendments by that subsection were effective Aug. 12, 1998.

CROSS REFERENCES

"Contraband" defined as in this section for purposes of any good bearing counterfeit mark and unlawful use of vessels, vehicles and aircraft in aid of commercial counterfeiting, see 49 USCA § 80302.

FEDERAL SENTENCING GUIDELINES

See Federal Sentencing Guidelines § 2B5.4, 18 USCA.

LIBRARY REFERENCES

American Digest System

Trade Regulation 312, 313
Key Number System Topic No. 382.

Encyclopedias

Trade-Marks, Trade-Names, and Unfair Competition, see C.J.S. §§ 135, 136.
Extortion, Blackmail, and Threats, 31A Am Jur 2d § 141.

Law Review and Journal Commentaries

Criminal (and Civil) Trademark Infringement: What Statute of Limitations Applies? Ronald J. Nessim, 76 J.Pat. & Trademark Off.Soc'y 933 (Dec. 1994).
Federal circuit: A case study in specialized courts. Rochelle Cooper Dreyfuss, 64 N.Y.U.L.Rev. 1 (1989).
The glass slipper: Determining the limitations period on criminal trademark infringement requires searching for the perfect statutory fit. Ronald J. Nessim, 17 L.A.Law. 38 (Nov. 1994).
The Trademark Counterfeiting Act of 1984: A sensible legislative response to the ills of commercial counterfeiting. 14 Fordham Urb.L.J. 115 (1985-1986).
Your image is my image: When advertising dedicates trademarks to the public domain—With an example from the Trademark Counterfeiting Act of 1984, Malla Pollack, 14 Cardozo L.Rev. 1391 (1993).

Texts and Treatises

Trademarks, 32 Fed Proc L Ed §§ 74:520, 521.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

Notes of Decisions

Authorized use 4
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Indictment 5
Knowledge 3
Likelihood of confusion 2
Restitution 7
Weight and sufficiency of evidence 6

1. Counterfeit marks

When genuine trademark is affixed to counterfeit product, it becomes "spurious mark" within meaning of statutory prohibi-

tion against trafficking in counterfeit goods. U.S. v. Petrosian, C.A.9 (Cal.) 1997, 126 F.3d 1232, certiorari denied 118 S.Ct. 1101, 522 U.S. 1138, 140 L.Ed.2d 156.

Fact that watches in question were sold at excessively cheap price did not preclude a finding that the watches were "counterfeit" within meaning of Trademark Counterfeiting Act. U.S. v. Gonzalez, S.D.Fla.1986, 630 F.Supp. 894, 229 U.S.P.Q. 396.

Trademark Counterfeiting Act reaches general public, nonpurchaser confusion, not just confusion of purchasers or prospective purchasers of goods or services bearing counterfeit trademarks. *U.S. v. Hon*, C.A.2 (N.Y.) 1990, 904 F.2d 803, 14 U.S.P.Q.2d 1959, certiorari denied 111 S.Ct. 789, 498 U.S. 1069, 112 L.Ed.2d 851.

Statute prohibiting trafficking in counterfeit goods requires only likelihood of confusion, and jury need not find actual confusion. U.S. v. Yamin, C.A.5 (La.) 1989, 868 F.2d 130, 10 U.S.P.Q.2d 1300, rehearing denied, certiorari denied 109 S.Ct. 3258, 492 U.S. 924, 106 L.Ed.2d 603.

In a prosecution under the Trademark Counterfeiting Act, it is sufficient that there is a likelihood of confusion, mistake, or deception as to any member of the public, even a mere viewer of the counterfeit article, whether or not there was any likelihood that the immediate purchaser would be confused by the counterfeit mark. *U.S. v. Infurnari*, W.D.N.Y.1986, 647 F.Supp. 57, 2 U.S.P.Q.2d 1072.

Defendant's alleged familiarity with genuine packaging of products from automobile manufacturer did not establish that defendant, who owned auto parts surplus warehouse and was warehouse distributor (WD) for manufacturer, had knowledge that parts received from auto parts dealer, in counterfeit packaging, were counterfeit. U.S. v. Sultan, C.A.5 (Tex.) 1997, 115 F.3d 321, 43 U.S.P.Q.2d 1276.

Defendant's purported lack of actual knowledge that trademarks were registered was not defense to prosecution for trafficking in counterfeit goods, as lack of knowledge of mark's registered status was not defense to infringement claim under Lanham Act. U.S. v. Sung, C.A.7 (Ill.) 1995, 51 F.3d 92, 34 U.S.P.Q.2d 1407.

Mens rea requirement for criminal trademark counterfeiting includes intent to traffic or attempt to traffic in goods or services and knowingly using counterfeit mark on or in connection with those goods or services. U.S. v. Hon, C.A.2 (N.Y.) 1990, 904 F.2d 803, 14 U.S.P.Q.2d

1959, certiorari denied 111 S.Ct. 789,
498 U.S. 1069, 112 L.Ed.2d 851.

Required level of mental culpability for conviction of trafficking in counterfeit goods is not specific intent; rather, defendant must "intend" to traffic in goods or services and he or she must "know" that goods or services are counterfeit. U.S. v. Gantos, C.A.8 (Mo.) 1987, 817 F.2d 41, 2 U.S.P.Q.2d 1536, certiorari denied 108 S.Ct. 175, 484 U.S. 860, 98 L.Ed.2d 128.

Trafficking in counterfeit goods did not require that defendant act with knowledge. U.S. v. Baker, C.A.5 (Tex.) 1986, 807 F.2d 427, 1 U.S.P.Q.2d 1485.

In a prosecution under the Trademark Counterfeiting Act, Government must prove that defendant knew that trademark was spurious, that it was used in connection with trafficking in goods or services, that it was identical to or virtually indistinguishable from another mark, and that it was likely to cause confusion, mistake or to deceive; Government need not prove that defendant was aware of fact that legitimate mark was registered with the Patent Office. U.S. v. Infurnari, W.D.N.Y. 1986, 647 F.Supp. 57, 2 U.S.P.Q.2d 1072.

"Authorized-use" exception to statute prohibiting trafficking in counterfeit goods did not apply to defendant that arranged for overseas manufacture of sneakers bearing trademark holder's mark; although defendant had authority from holder to assemble raw materials, import sewing machines and molds and train workers to produce shoes, such activities alone did not constitute "production" within meaning of exception, and authorization had ended when production of shoes was complete. *U.S. v. Bohai Trading Co., Inc.*, C.A.1 (N.H.) 1995, 45 F.3d 577, 33 U.S.P.Q.2d 1625.

Counterfeit mark was unit of prosecution for crime of knowingly using counterfeit mark and intentionally trafficking or attempting to traffic in goods or services, and, thus, indictment charging different counterfeit mark in each count was not multiplicitous. *U.S. v. Song*, **CA-7 (Ind.)** 1991, 934 F.2d 105, 19 U.S.P.Q.2d 1630.

6. Weight and sufficiency of
Evidence was sufficient that watches sold by defendant were counterfeit, thus supporting conviction for trafficking and conspiracy in counterfeit watches; weight of Government bore imitator marks which were virtually identical to registered trademarks, and experts testified that consumers could be confused by replica watches; genuine counterparts. U.S. v. [redacted], 98-111 (Fla.) 1987, 820 F.2d 1399, certiorari denied, 484 U.S. 902, 98

Evidence was sufficient to
ernment to overcome motio
indictment on two counts
and attempting to traffic i
watches; evidence that alleg-

(a) Whoever buys, with intent to sell or otherwise dispose of, any vehicle part, knowing the vehicle or part has been altered, shall be fined not more than ten years, or both.

(b) Subsection (a) tampering, or alteration

(1) is caused by

(2) is not a viol.

(c) As used in this title, the words "motor vehicle" have the same meaning as in this title.

(Added Pub.L. 98-547,
amended Pub.L. 99-646
103-322. Title XXXIII,

Revision Notes and Legislation
1984 Acts. House Report
see 1984 U.S. Code Con
News, p. 4628.

1986 Acts. House Report
see 1986 U.S. Code Con
News, p. 6138.

1994 Acts, House Report
and 103-489, and House C

1959, certiorari denied 111 S.Ct. 789, 498 U.S. 1069, 112 L.Ed.2d 851.

Required level of mental culpability for conviction of trafficking in counterfeit goods is not specific intent; rather, defendant must "intend" to traffic in goods or services and he or she must "know" that goods or services are counterfeit. U.S. v. Gantos, C.A.8 (Mo.) 1987, 817 F.2d 41, 2 U.S.P.Q.2d 1536, certiorari denied 108 S.Ct. 175, 484 U.S. 860, 98 L.Ed.2d 128.

Trafficking in counterfeit goods did not require that defendant act with knowledge of criminality of conduct. U.S. v. Baker, C.A.5 (Tex.) 1986, 807 F.2d 427, 1 U.S.P.Q.2d 1485.

In a prosecution under the Trademark Counterfeiting Act, Government must prove that defendant knew that trademark was spurious, that it was used in connection with trafficking in goods or services, that it was identical to or virtually indistinguishable from another mark, and that it was likely to cause confusion, mistake or to deceive; Government need not prove that defendant was aware of fact that legitimate mark was registered with the Patent Office. U.S. v. Infumari, W.D.N.Y. 1986, 647 F.Supp. 57, 2 U.S.P.Q.2d 1072.

4. Authorized use

"Authorized-use" exception to statute prohibiting trafficking in counterfeit goods did not apply to defendant that arranged for overseas manufacture of sneakers bearing trademark holder's mark; although defendant had authority from holder to assemble raw materials, import sewing machines and molds and train workers to produce shoes, such activities alone did not constitute "production" within meaning of exception, and authorization had ended when production of shoes was complete. U.S. v. Bohai Trading Co., Inc., C.A.1 (N.H.) 1995, 45 F.3d 577, 33 U.S.P.Q.2d 1625.

5. Indictment

Counterfeit mark was unit of prosecution for crime of knowingly using counterfeit mark and intentionally trafficking or attempting to traffic in goods or services, and, thus, indictment charging different counterfeit mark in each count was not multiplicitous. U.S. v. Song, C.A.7 (Ind.) 1991, 934 F.2d 105, 19 U.S.P.Q.2d 1630.

6. Weight and sufficiency of evidence

Evidence was sufficient to establish that watches sold by defendants were counterfeit, thus supporting their conviction for trafficking and conspiracy to traffic in counterfeit watches; watches seized by Government bore imitation trademarks which were virtually identical to registered trademarks, and government experts testified that consumers frequently confused replica watches with their genuine counterparts. U.S. v. McEvoy, C.A.11 (Fla.) 1987, 820 F.2d 1170, 3 U.S.P.Q.2d 1399, certiorari denied 108 S.Ct. 243, 484 U.S. 902, 98 L.Ed.2d 201.

Evidence was sufficient to enable Government to overcome motion to dismiss indictment on two counts of trafficking and attempting to traffic in counterfeit watches; evidence that allegedly counter-

feit watches bore trademark, were of identical design, and were the same type of product was sufficient to support allegation that the marks used in connection with the counterfeit watches were likely to cause the purchasing public to be confused, mistaken or deceived. U.S. v. Torkington, C.A.11 (Fla.) 1987, 812 F.2d 1347, 2 U.S.P.Q.2d 1166.

7. Restitution

Order of restitution to trademark owner in criminal prosecution for trafficking in counterfeit goods was improper, absent finding by district court that goods contained proper notice of mark's registered status or that defendant had actual knowledge of registration. U.S. v. Sung, C.A.7 (Ill.) 1995, 51 F.3d 92, 34 U.S.P.Q.2d 1407.

§ 2321. Trafficking in certain motor vehicles or motor vehicle parts

(a) Whoever buys, receives, possesses, or obtains control of, with intent to sell or otherwise dispose of, a motor vehicle or motor vehicle part, knowing that an identification number for such motor vehicle or part has been removed, obliterated, tampered with, or altered, shall be fined under this title or imprisoned not more than ten years, or both.

(b) Subsection (a) does not apply if the removal, obliteration, tampering, or alteration—

(1) is caused by collision or fire; or

(2) is not a violation of section 511 of this title.

(c) As used in this section, the terms "identification number" and "motor vehicle" have the meaning given those terms in section 511 of this title.

(Added Pub.L. 98-547, Title II, § 204(a), Oct. 25, 1984, 98 Stat. 2770, and amended Pub.L. 99-646, § 42(a), Nov. 20, 1986, 100 Stat. 3601; Pub.L. 103-322, Title XXXIII, § 330016(1)(N), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1984 Acts. House Report No. 98-1087, see 1984 U.S. Code Cong. and Adm. News, p. 4628.

1986 Acts. House Report No. 99-797, see 1986 U.S. Code Cong. and Adm. News, p. 6138.

1994 Acts. House Report Nos. 103-324 and 103-489, and House Conference Re-

port No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

Amendments

1994 Amendments. Subsec. (a). Pub.L. 103-322, § 330016(1)(K), substituted "under this title" for "not more than \$20,000" wherever appearing.

UNITED STATES CODE ANNOTATED

Title 18
Crimes and Criminal Procedure
§§ 2231 to 2440

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A THOMSON COMPANY

CRIMES AND CRIMINAL PROCEDURE

than 2261A, a spouse or former spouse of the abuser, a child in common with the abuser, and a person who is treated as a spouse with the abuser; and

... a spouse or former spouse of the target of the offense who shares a child in common with the target of the offense and who cohabits or has cohabited as a spouse with the target; and

... similarly situated to a spouse who is protected by the domestic violence laws of the State or tribal jurisdiction in which the victim resides.

... "e" includes a State of the United States, the District of Columbia, wealth, territory, or possession of the United States.

... foreign commerce.—The term "travel in interstate commerce" does not include travel from 1 State to another by an individual of an Indian tribe and who remains at all times in the territory of which the individual is a member.

... Title I, § 1107(d), Oct. 28, 2000, 114 Stat. 1499.)

CRIMINAL AND STATUTORY NOTES

... pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

... "spouse or intimate partner" includes—

... "(A) a spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and

... "(B) any other person similarly situated to a spouse who is protected by the domestic violence or family violence laws of the State in which the injury occurred or where the victim resides.

... "State" includes a State of the United States, the District of Columbia, a commonwealth, territory, or possession of the United States.

... "travel across State lines" does not include travel across State lines by an individual who is a member of an Indian tribe when such individual remains at all times in the territory of the Indian tribe of which the individual is a member."

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... stolen goods, securities, moneys, fraudulent State tax returns, and in counterfeiting

Notes of Decisions

CRIMES

... and de-

... in Austria

... by Ameri-

... subject to

... the prohibi-

... goods un-

... U.S. v.

... F.Supp.2d

III. PROSECUTION AND PUNISHMENT

113. — Particular cases sufficient, indictment, prosecution and punishment

Indictment, which alleged that defendant "agents" submitted hundreds of life insurance applications to insurance companies with knowledge that policy purchasers had no intention or no ability to either initially purchase the high benefit policies or continue the policy by making a second year premium payment, sufficiently alleged violation of section of the National Stolen Property Act prohibiting the interstate transportation of goods, services, wares, merchandise, securities or money valued at \$5,000 or

CRIMES AND CRIMINAL PROCEDURE

18 § 2423

Note 13

more by individuals who knew the property to have been stolen, converted, or taken by fraud; under Wyoming law, defendants all stood in a fiduciary relationship to the insurance companies for which they were agents or sub-agent, selling insurance on behalf of the company, and

in such a fiduciary relationship, defendants had a duty to disclose material information to the insurance companies that would be relevant to the insurers' decisions to issue insurance policies to life insurance policy applicants. U.S. v. Schwab, D.Wyo.2000, 88 F.Supp.2d 1275.

§ 2320. Trafficking in counterfeit goods or services

Notes of Decisions

1. Counterfeit marks

Criminal trademark infringement statute, which prohibits trafficking in counterfeit goods,

does not also prohibit trafficking in counterfeit labels that are unconnected to any goods. U.S. v. Giles, C.A.10 (Okla.) 2000, 213 F.3d 1247, 94 U.S.P.Q.2d 1919.

CHAPTER 113B—TERRORISM

§ 2332a. Use of certain weapons of mass destruction

Notes of Decisions

3. Weight and sufficiency of evidence

Evidence that e-mails threatening to use a weapon of mass destruction, namely a biological agent and a weapon involving a disease organism, were sent from Texas and were received by

government agencies outside of Texas was sufficient to support defendants' convictions for threatening to use a weapon of mass destruction; use of the weapons specified in the threat would have affected interstate commerce. U.S. v. Wise, C.A.5 (Tex.) 2000, 221 F.3d 140.

CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES

§ 2422. Coercion and enticement

Notes of Decisions

4. Elements of offense

Statute prohibiting attempts to induce minors into sexual activities makes unlawful attempts to

induce those believed to be minors, even if they turn out to be of-age federal agents, into sexual activities. U.S. v. Miller, N.D.Ill.2000, 102 F.Supp.2d 946.

§ 2423. Transportation of minors

Notes of Decisions

1. Constitutionality

Government established that defendant traveled in interstate commerce with intent to engage in sexual acts with minor; after meeting police officer posing as 13-year-old girl in Internet chat room and obtaining agreement to engage in sex, defendant said he would be driving from his home in New Jersey to her New York state location, and asked for directions. U.S. v. Han, N.D.N.Y.1999, 66 F.Supp.2d 362.

13. Weight and sufficiency of evidence

Evidence was insufficient to support finding that defendant was predisposed to commit crime

of crossing state lines for purpose of engaging in sex acts with minor, and government thus failed to overcome his entrapment defense; his willingness to commit offense could have been result of government inducement in form of e-mails from agent posing as mother seeking "sexual mentor" for her three daughters, defendant seemed to be seeking adult relationship initially when he responded to agent's advertisement, and there was no indication of pre-existing interest in children other than one statement that he had "always looked at little girls." U.S. v. Poehlman, C.A.9 (Cal.) 2000, 217 F.3d 692.

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