

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 232

Short Title: Modify Counterfeit Sales Prosecutions. (Public)

Sponsors: Senator Kinnaird.

Referred to: Judiciary I (Civil).

February 21, 2007

A BILL TO BE ENTITLED
AN ACT TO MODIFY PROSECUTIONS OF COUNTERFEIT SALES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 80-11.1 reads as rewritten:

"§ 80-11.1. Criminal use of counterfeit trademark.

(a) For purposes of this section:

(1) "Counterfeit mark" means a mark that is used in connection with the sale or offering for sale of goods or services that are identical to or substantially indistinguishable from the goods or services with which the mark is used or registered, and the use of which is likely to cause confusion, mistake, or deception, with the use occurring without authorization of the:

a. Owner of the registered mark, and is identical to or substantially indistinguishable from a mark that is registered on the principal register of the United States Patent and Trademark Office or with the Trademark Division of the Department of the Secretary of State; or

b. Owner of the unregistered mark and is identical to or substantially indistinguishable from symbols, signs, emblems, insignias, trademarks, trade names, or words protected by section 110 of the Amateur Sports Act of 1978 (Title 36, U.S.C. § 380).

(2) "Retail sales value" means the value computed by multiplying the number of items having a counterfeit mark used thereon or in connection therewith, by the retail price at which ~~a similar item having a mark used thereon or in connection therewith, the use of which is authorized by the owner,~~ the item having a counterfeit mark is offered for sale to the public.

1 (b) Any person who knowingly and willfully (i) uses or causes to be used
2 counterfeit mark on or in connection with goods or services intended for sale or (ii) has
3 possession, custody, or control of goods having a counterfeit mark used thereon or in
4 connection therewith, that are intended for sale, shall be punished as follows:

5 (1) If the goods or services having a counterfeit mark used thereon or in
6 connection therewith, or on or in connection with which the person
7 intends to use a counterfeit mark, have a retail sales value not
8 exceeding three thousand dollars (\$3,000), the person is guilty of a
9 Class 2 misdemeanor;

10 (2) If the goods or services having a counterfeit mark used thereon or in
11 connection therewith, or on or in connection with which the person
12 intends to use a counterfeit mark, have a retail sales value exceeding
13 three thousand dollars (\$3,000) but not exceeding ten thousand dollars
14 (\$10,000), the person is guilty of a Class I felony; and

15 (3) If the goods or services having a counterfeit mark used thereon or in
16 connection therewith, or on or in connection with which the person
17 intends to use a counterfeit mark, have a retail sales value exceeding
18 ten thousand dollars (\$10,000), the person is guilty of a Class H
19 felony.

20 The possession, custody, or control of more than 25 items having a counterfeit mark
21 used thereon or in connection therewith creates a presumption that the person having
22 possession, custody, or control of the items intended to sell those items.

23 (c) Any person who knowingly (i) uses any object, tool, machine, or other device
24 to produce or reproduce a counterfeit mark or (ii) has possession, custody, or control of
25 any object, tool, machine, or device with intent to produce or reproduce a counterfeit
26 mark, is guilty of a Class H felony.

27 (d) Any personal property, including any item, object, tool, machine, device, or
28 vehicle of any kind, employed as an instrumentality in the commission of, or in aiding
29 or abetting in the commission of a violation of subsection (b) or (c) of this section, is
30 subject to seizure and forfeiture and shall be disposed of in accordance with the
31 provisions of Article 2 of Chapter 15 of the General Statutes.

32 (d1) A criminal proceeding for a violation of this section may be commenced only
33 after the proper district attorney has issued a cease and desist letter that has been
34 actually received by the party to be charged with the violation, and the party has failed
35 to cease and desist. In a criminal proceeding for a violation of this section, the court
36 shall take judicial notice of the cease and desist letter and shall not require the district
37 attorney to prove its authenticity.

38 (e) For purposes of enforcing this section, the Department of the Secretary of
39 State's law enforcement agents have statewide jurisdiction. These law enforcement
40 agents may assist local law enforcement agencies in their investigations and may initiate
41 and carry out, in coordination with local law enforcement agencies, investigations of
42 violations of this section. These law enforcement agents have all of the powers and
43 authority of law enforcement officers when executing arrest warrants. These agents

1 shall be authorized to have fictitious licenses, license tags, and registrations, pursuant to
2 G.S. 20-39(h) or G.S. 14-250, for the purpose of conducting criminal investigations.

3 (f) The Secretary of State may refer any available evidence concerning violations
4 of this section to the proper district attorney, who may, with or without such a reference,
5 institute the appropriate criminal proceedings.

6 The attorneys employed by the Secretary of State shall be available to prosecute or
7 assist in the prosecution of criminal cases when requested to do so by a district attorney
8 and the Secretary of State approves.

9 (g) Pursuant to an agreement between the departments, the Secretary of State
10 may refer any available evidence concerning violations of this section to the Secretary
11 of Revenue for purposes of determining the obligations of the violators of this section to
12 the State under the provisions of Chapter 105 of the General Statutes."

13 **SECTION 2.** This act becomes effective December 1, 2007, and applies to
14 offenses committed on or after that date. Prosecutions for offenses committed before the
15 effective date of this act are not abated or affected by this act, and the statutes that
16 would be applicable but for this act remain applicable to those prosecutions.