

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 193

By: Morgan

AS INTRODUCED

An Act relating to trademarks and labels; creating Oklahoma Anticounterfeiting Act; providing short title; defining terms; making certain act misdemeanor; making certain acts felonies; stating punishments; providing for seizure, forfeiture, destruction, and disposal of certain property pursuant to certain provisions of law; making certain certificate prima facie evidence of fact; providing for codification; making act cumulative; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101 of Title 78, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Anticounterfeiting Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 102 of Title 78, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Counterfeit mark" means:

- 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; and

3. "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.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103 of Title 78, unless there is created a duplication in numbering, reads as follows:

A. Any person who willfully manufactures, uses, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute any item, or services, bearing or identified by a counterfeit mark, shall be guilty of the crime of counterfeiting.

B. A person having possession, custody, or control of more than twenty-five (25) items bearing a counterfeit mark shall be presumed to possess the items with intent to sell or distribute.

C. 1. Except as provided in paragraph 2 of this subsection, counterfeiting shall be a misdemeanor punishable, upon conviction, by a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment in the county jail for not more than ten (10) days, or both such fine and imprisonment; and

2. Counterfeiting shall be a Schedule F felony if:

- a. the defendant has previously been convicted under this statute, or
- b. the violation involves more than one hundred (100) items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by,

a counterfeit mark is more than One Thousand Dollars (\$1,000.00).

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 104 of Title 78, unless there is created a duplication in numbering, reads as follows:

A. Any items bearing a counterfeit mark, and all personal property including, but not limited to, any items, objects, tools, machines, equipment, or instrumentalities of any kind, employed or used primarily in connection with a violation of this act shall be seized by the law enforcement officer discovering same and placed into the custody of the law enforcement agency by whom employed.

B. 1. All items bearing a counterfeit mark seized pursuant to subsection A of this section, and all items whose employment or use is peculiar to the creation of a counterfeit mark, shall, pursuant to the provisions of Section 1738 of Title 21 of the Oklahoma Statutes, be destroyed.

2. All other property seized pursuant to subsection A of this section shall, pursuant to Section 1738 of Title 21 of the Oklahoma Statutes, be forfeited and disposed of according thereto.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105 of Title 78, unless there is created a duplication in numbering, reads as follows:

Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 106 of Title 78, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall be cumulative to existing laws.

SECTION 7. It being immediately necessary for the preservation of the public peace, health, and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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