

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/21/01 H3/26/01

A Bill

HOUSE BILL 2467

5 By: Representative C. Johnson
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For An Act To Be Entitled

9 AN ACT TO CREATE THE CRIMINAL OFFENSE OF
10 COUNTERFEITING A COLLEGIATE MARK; AND FOR OTHER
11 PURPOSES.
12

Subtitle

14 AN ACT TO CREATE THE CRIMINAL OFFENSE OF
15 COUNTERFEITING A COLLEGIATE MARK.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Definitions. For purposes of this act, the term:

21 (1) "Counterfeit mark" means:

22 (A) Any unauthorized reproduction or copy of a collegiate mark;

23 or

24 (B) A collegiate mark affixed to any item knowingly sold,
25 offered for sale, manufactured, or distributed, or identifying services
26 offered or rendered, without the authority of the owner of the collegiate
27 mark.

28 (2) "Collegiate mark" means any trademark, service mark, or trade
29 name, adopted or used by an institution of higher education to identify the
30 institution's goods or services.

31 (3) "Person" means an individual, partnership, corporation, limited
32 liability company, association, or other legal entity.

33 (4)(A) "Retail value" means the counterfeiter's regular selling price
34 for the item or service bearing or identified by the counterfeit mark.

35 (B) In the case of items bearing a counterfeit mark which are
36 components of a finished product, the retail value shall be the

1 counterfeiter's regular selling price of the finished product on or in which
2 the component would be utilized.

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4 SECTION 2. Violation.

5 (a) Any person who knowingly manufactures, uses, displays, advertises,
6 distributes, offers for sale, sells, or possesses, with intent to sell or
7 distribute any item, or services, bearing or identified by a counterfeit
8 mark, shall be guilty of counterfeiting.

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

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13 SECTION 3. Penalties.

14 (a) Counterfeiting shall be a Class C misdemeanor, except as provided
15 in subsections (b) and (c) of this section.

16 (b) Counterfeiting shall be a Class B misdemeanor if:

17 (1) The defendant has previously been convicted under this act;
18 or

19 (2) The violation involves more than one hundred (100), but
20 fewer than one thousand (1,000) items bearing a counterfeit mark or the total
21 retail value of all items bearing, or services identified by, a counterfeit
22 mark is more than one thousand dollars (\$1,000), but less than ten thousand
23 dollars (\$10,000).

24 (c) Counterfeiting shall be a Class A misdemeanor if:

25 (1) The defendant has been previously convicted of two (2) or
26 more offenses under this act;

27 (2) The violation involves the manufacture or production of
28 items bearing counterfeit marks; or

29 (3) The violation involves one thousand (1,000) or more items
30 bearing a counterfeit mark or the total retail value of all items bearing, or
31 services identified by, a counterfeit mark is more than ten thousand dollars
32 (\$10,000).

33 (d) For purposes of this section, the quantity or retail value of
34 items or services shall include the aggregate quantity or retail value of all
35 items bearing, or services identified by, every counterfeit mark the
36 defendant manufactures, uses, displays, advertises, distributes, offers for

1 sale, sells or possesses.

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3 SECTION 4. Seizure.

4 (a) Any items bearing a counterfeit mark shall be subject to seizure
5 as contraband by any law enforcement officer and disposed of in accordance
6 with Arkansas Code 5-5-101.

7 (b) Notwithstanding Arkansas Code 5-5-501, seized items bearing a
8 counterfeit mark must be destroyed unless the collegiate mark owner consents
9 to another disposition.

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11 SECTION 5. Defenses.

12 It is an affirmative defense to a prosecution under this act for use of
13 the collegiate mark as part of a trade name that the defendant in good faith
14 reasonably believed that he or she possessed the right to use the collegiate
15 mark as part of a trade name evidenced by use of the collegiate mark prior to
16 the effective date of this act.

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18 SECTION 6. Other provisions.

19 (a) Any state or federal certificate of registration of any collegiate
20 mark shall be prima facie evidence of the facts stated in the certificate of
21 registration.

22 (b) The remedies provided for in this act shall be in addition to all
23 the other civil and criminal remedies provided by law.

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25 /s/ C. Johnson
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