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**ANTICOUNTERFEITING CONSUMER PROTECTION  
ACT OF 1995**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
COURTS AND INTELLECTUAL PROPERTY  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

**H.R. 2511**

ANTICOUNTERFEITING CONSUMER PROTECTION ACT OF 1995

DECEMBER 7, 1995

**Serial No. 108**



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## **ANTICOUNTERFEITING CONSUMER PROTECTION ACT OF 1995**

**THURSDAY, DECEMBER 7, 1995**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COURTS AND  
INTELLECTUAL PROPERTY,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.***

The subcommittee met, pursuant to notice, at 10:05 a.m., in room B-352, Rayburn House Office Building, Hon. Carlos J. Moorhead (chairman of the subcommittee) presiding.

Present: Representatives Carlos J. Moorhead, F. James Sensenbrenner, Jr., Bob Goodlatte, and John Conyers, Jr.

Also present: Thomas E. Mooney, chief counsel; Joseph V. Wolfe, counsel; Jon Dudas, assistant counsel; Veronica Eligan, secretary; Betty Wheeler, minority counsel; and Stephanie Peters, minority counsel.

### **OPENING STATEMENT OF CHAIRMAN MOORHEAD**

Mr. MOORHEAD. The Subcommittee on Courts and Intellectual Property will come to order.

Today, the subcommittee is conducting a hearing on H.R. 2511, the Anticounterfeiting Consumer Protection Act of 1995. I would like to commend my friend and colleague from Virginia, Mr. Goodlatte, for his leadership in introducing this bill, which is co-sponsored by Chairman Hyde, Ranking Minority Member Conyers, myself, and several members of the subcommittee. A companion bill in the Senate, S. 1136, was unanimously approved by the Senate Judiciary Committee on October 26.

Current law recognizes that a problem of criminal trademark and copyright counterfeiting exists but does not do enough to deter and prosecute counterfeiters. Criminal counterfeiting has risen to a new level. In 1982, the cost of U.S. piracy to U.S. industries was approximately \$5.5 billion. Today, American businesses lose 35 times that amount, more than \$200 billion a year.

The combination of high profits and low risk of prosecution has made trademark and copyright counterfeiting a favorite activity of organized crime syndicates. Law enforcement agents from the U.S. Customs Service have said combating criminal activity connected to counterfeiting is starting to look like attacking the drug trafficking problem.

These same agents recently coordinated raids in New York and Los Angeles that netted \$27 million in counterfeit merchandise and supported indictments of 43 members of a Korean crime syndicate.

(1)

We are happy to have Mr. Steve Walton here today to answer our questions about this and similar experiences of the Customs Service.

The price of counterfeiting goes well beyond lost revenues and damaged business reputations; it can cost lives. Several fatal automobile, airplane, and helicopter crashes have been associated with faulty counterfeit machine parts. Name-brand prescription and over-the-counter drugs have also been counterfeited. Millions of bogus pills containing inferior, or even harmful, ingredients have been distributed to unsuspecting consumers who intended to purchase medicine.

Searle discovered the distribution of more than 1 million bogus birth control pills after several women complained of unusual bleeding. Tylenol, Advil, Tagamet, Ceclor, and Zantac are all other famous name-brand pharmaceuticals that have been counterfeited. We will hear today from Ms. Angela Small on how toymakers are concerned that cheap knockoffs present choking hazards and may contain toxic paints or dyes.

H.R. 2511 proposes key amendments to both criminal and civil laws in response to the growing threat to criminal counterfeiting. It improves the ability of law enforcement officers to detect and arrest counterfeiters. It also allows for meaningful prosecution of all levels of a criminal organization involved in the counterfeiting.

H.R. 2511 provides for civil fines against importers of seized counterfeit goods, and it allows trademark owners the option of statutory damages in civil cases. The bill also allows trademark owners to review appropriate shipping information to determine whether the cargo contains counterfeited goods.

Finally, this bill ensures that seized counterfeit goods are destroyed rather than returned to the importer for reshipment to another port of entry.

Once again, I support H.R. 2511, the Anticounterfeiting Consumer Protection Act of 1995, and I thank the gentleman from Virginia for introducing it.

[The bill, H.R. 2511, follows:]

104TH CONGRESS  
1ST SESSION

# H. R. 2511

To control and prevent commercial counterfeiting, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 19, 1995

Mr. GOODLATTE (for himself, Mr. HYDE, Mr. CONYERS, Mr. MOORHEAD, Mr. MCCOLLUM, Mr. FRANK of Massachusetts, Mr. GEKAS, Mr. SMITH of Texas, Mr. COBLE, Mr. CANADY of Florida, Mr. BONO, Mr. HEINEMAN, Mr. FLANAGAN, and Mr. DAVIS) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To control and prevent commercial counterfeiting, and for other purposes.

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. SHORT TITLE.**

4 This Act may be cited as the "Anticounterfeiting  
5 Consumer Protection Act of 1995".

6 **SEC. 2. COUNTERFEITING AS RACKETEERING.**

7 Section 1961(1)(B) of title 18, United States Code,  
8 is amended by inserting " , section 2318 (relating to traf-  
9 ficking in counterfeit labels for phonorecords, computer

1 programs or computer program documentation or packag-  
2 ing and copies of motion pictures or other audiovisual  
3 works), section 2319 (relating to criminal infringement of  
4 a copyright), section 2320 (relating to trafficking in goods  
5 or services bearing counterfeit marks)” after “sections  
6 2314 and 2315 (relating to interstate transportation of  
7 stolen property),”.

8 **SEC. 3. APPLICATION TO COMPUTER PROGRAMS, COM-**  
9 **PUTER PROGRAM DOCUMENTATION, OR**  
10 **PACKAGING.**

11 Section 2318 of title 18, United States Code, is  
12 amended—

13 (1) in subsection (a), by inserting “a computer  
14 program or computer program documentation or  
15 packaging or” after “copy of”;

16 (2) in subsection (b)(3), by inserting “‘com-  
17 puter program,’” after “‘motion picture,’”; and

18 (3) in subsection (c)(3), by inserting “a copy of  
19 a computer program or computer program docu-  
20 mentation or packaging,” after “enclose,”.

21 **SEC. 4. TRAFFICKING IN COUNTERFEIT GOODS OR SERV-**  
22 **ICES.**

23 Section 2320 of title 18, United States Code, is  
24 amended by adding at the end the following:

1       “(e) Beginning with the first year after the date of  
2 the enactment of this subsection, the Attorney General  
3 shall include in the report of the Attorney General to Con-  
4 gress on the business of the Department of Justice pre-  
5 pared pursuant to section 522 of title 28, on a district  
6 by district basis, for all actions involving trafficking in  
7 counterfeit labels for phonorecords, copies of computer  
8 programs or computer program documentation or packag-  
9 ing, copies of motion pictures or other audiovisual works  
10 (as defined in section 2318 of title 18), criminal infringe-  
11 ment of copyrights (as defined in section 2319 of title 18),  
12 or trafficking in goods or services bearing counterfeit  
13 marks (as defined in section 2320 of title 18), an account-  
14 ing of—

15           “(1) the number of open investigations;

16           “(2) the number of cases referred by the United  
17 States Customs Service;

18           “(3) the number of cases referred by other  
19 agencies or sources; and

20           “(4) the number and outcome, including settle-  
21 ments, sentences, recoveries, and penalties, of all  
22 prosecutions brought under sections 2318, 2319,  
23 and 2320 to title 18.”.

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1 **SEC. 5. SEIZURE OF COUNTERFEIT GOODS.**

2 Section 34(d)(9) of the Act of July 5, 1946 (com-  
3 monly known as the Lanham Act) (15 U.S.C. 1116(d)(9))  
4 is amended by striking the first sentence and inserting the  
5 following: "A court may order the seizure of an aircraft,  
6 vehicle, or vessel used in connection with a violation of  
7 this Act. The court shall order that service of a copy of  
8 the order under this subsection shall be made by a Federal  
9 law enforcement officer (such as a United States marshal  
10 or an officer or agent of the United States Customs Serv-  
11 ice, Secret Service, Federal Bureau of Investigation, or the  
12 United States Postal Service) or may be made by a State  
13 or local law enforcement officer, who, upon making serv-  
14 ice, shall carry out the seizure under the order."

15 **SEC. 6. DISPOSITION OF MERCHANDISE BEARING COUN-**  
16 **TERFEIT AMERICAN TRADEMARK AND CIVIL**  
17 **PENALTIES.**

18 Title VI of the Act of July 5, 1946 (commonly known  
19 as the Lanham Act) (15 U.S.C. 1114 and following) is  
20 amended by inserting after section 34 the following:

21 "SEC. 34A. (a) Any merchandise bearing a counter-  
22 feit mark (as defined in section 45) imported into the  
23 United States in violation of section 42 shall be seized by  
24 the appropriate Federal official and, in the absence of the  
25 written consent of the trademark owner, forfeited. Upon  
26 seizure of such merchandise, the appropriate official shall

•HR 2511 IH

1 notify the owner of the trademark, and shall, after forfeit-  
2 ure, destroy the merchandise. Alternatively, if the mer-  
3 chandise is not unsafe or a hazard to health, and the offi-  
4 cial has the consent of the trademark owner, the appro-  
5 priate official may obliterate the trademark where feasible  
6 and dispose of the goods seized—

7           “(1) by delivery to such Federal, State, and  
8           local government agencies as in the opinion of the  
9           appropriate official have a need for such merchan-  
10          dise;

11           “(2) by gift to such eleemosynary institutions  
12          as in the opinion of the appropriate official have a  
13          need for such merchandise; or

14           “(3) more than 1 year after the date of forfeit-  
15          ure, by sale by appropriate officials at public auc-  
16          tion, except that before making any such sale the of-  
17          ficial shall determine that no Federal, State, or local  
18          government agency or eleemosynary institution has  
19          established a need for such merchandise under para-  
20          graph (1) or (2).

21           “(b)(1) Any person who directs, assists financially or  
22          otherwise, or is in any way concerned in the importation  
23          of merchandise for sale or public distribution that is seized  
24          under subsection (a) shall be subject to a civil fine.

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1       “(2) For the first such seizure, the fine shall be equal  
2 to the value that the merchandise would have had if it  
3 were genuine, according to the manufacturer’s suggested  
4 retail price, as determined under regulations prescribed by  
5 the Secretary of the Treasury.

6       “(3) For the second seizure and thereafter, the fine  
7 shall be equal to twice the value that the merchandise  
8 would have had if it were genuine, according to the manu-  
9 facturer’s suggested retail price, as determined under reg-  
10 ulations prescribed by the Secretary of the Treasury.

11       “(4) The imposition of a fine under this subsection  
12 shall be within the discretion of the court, and shall be  
13 in addition to any other civil or criminal penalty or other  
14 remedy authorized by law.”.

15 **SEC. 7. RECOVERY FOR VIOLATION OF RIGHTS.**

16       Section 35 of the Act of July 5, 1946 (commonly  
17 known as the Lanham Act) ( 15 U.S.C. 1117), is amended  
18 by adding at the end the following:

19       “(c) In a case involving the use of a counterfeit mark  
20 (as defined in section 34(d)) in connection with the sale,  
21 offering for sale, or distribution of goods or services, the  
22 plaintiff may elect, at any time before final judgment is  
23 rendered by the trial court, to recover, instead of actual  
24 damages and profits under subsection (a), an award of  
25 statutory damages for any such use in the amount of—

1           “(1) not less than \$500 or more than \$100,000  
 2           per counterfeit mark per type of goods or services  
 3           sold, offered for sale, or distributed, as the court  
 4           considers just; or

5           “(2) if the court finds that the use of the coun-  
 6           terfeit mark was willful, not more than \$1,000,000  
 7           per counterfeit mark per type of goods or services  
 8           sold, offered for sale, or distributed, as the court  
 9           considers just.”.

10 **SEC. 8. DISPOSITION OF EXCLUDED ARTICLES.**

11           Section 603(e) of title 17, United States Code, is  
 12           amended in the second sentence by striking “as the case  
 13           may be;” and all that follows through the end and insert-  
 14           ing “as the case may be.”.

15 **SEC. 9. RECORDKEEPING REQUIREMENTS.**

16           Section 42 of the Act of July 5, 1946 (commonly  
 17           known as the Lanham Act) ( 15 U.S.C. 1124) is  
 18           amended—

19           (1) by inserting “(a)” after “SEC. 42.”; and

20           (2) by adding at the end the following:

21           “(b)(1) The owner, registrant, or authorized user of  
 22           a trademark registered under this Act, and any authorized  
 23           agent or representative thereof, shall be entitled to obtain  
 24           from the appropriate Federal officers in a timely manner

1 the following information when contained in a vessel or  
2 aircraft manifest:

3           “(A) The name and address of each importer or  
4           consignee and the name and address of the shipper  
5           to such importer or consignee, unless the importer  
6           or consignee has made a biennial certification, in ac-  
7           cordance with procedures adopted by the Secretary  
8           of the Treasury, claiming confidential treatment of  
9           such information.

10           “(B) The general character of the cargo.

11           “(C) The number of packages and gross weight.

12           “(D) The name of the vessel or aircraft.

13           “(E) The port of loading.

14           “(F) The port of discharge.

15           “(G) The country of origin of the shipment.

16           “(2) The documentation relating to the entry into the  
17 United States of imported merchandise shall contain such  
18 information as may be necessary to determine whether the  
19 merchandise bears an infringing trademark in violation of  
20 subsection (a) or any other applicable law, including a  
21 trademark appearing on goods or packaging.”.

○

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Mr. MOORHEAD. The gentleman from Virginia.

Mr. GOODLATTE. Thank you, Mr. Chairman.

I want to thank you for holding this hearing on the Anticounterfeiting Consumer Protection Act of 1995, which I introduced in the House of Representatives on October 19. I greatly appreciate your strong support of this important legislation which will strengthen the ability of law enforcement to combat the rapidly growing problem of counterfeited goods and services.

Now, I want to say that the reason I have all these consumer products over here isn't because we are getting close to Christmas but to give some examples of this. But I think this is also a timely time of the year to be talking about this because consumers should be wary of what they buy, not only because they are getting counterfeit products that cost the U.S. jobs but they are also getting unsafe products, inadequate products, and I will get to some of those in a moment.

Companion legislation, S. 1186, was introduced by Senator Hatch and was recently reported out of the Senate Judiciary Committee by unanimous consent and awaits consideration by the full Senate. I am hopeful that H.R. 2511 will move as easily through the legislative process in the House. Your scheduling this hearing certainly speeds us well on our way.

No one should be fooled in believing that counterfeiting is just a penny ante, victimless crime involving \$5 fake Rolex watches and Ray Ban sunglasses, not that they wouldn't be concerned about this problem. We will hear today from today's witnesses that it has a huge price tag attached with over \$200 billion in lost revenue each year. We are talking about highly sophisticated criminal activity involving billions of dollars, high-tech equipment, organized crime, gangs, and terrorists.

Sadly, we are also talking about an activity that potentially threatens the health and safety of every one of us. Many of you probably saw this ad back in August voluntarily run nationwide by a manufacturer of a popular antidandruff shampoo, Head and Shoulders, warning consumers that counterfeits of their product contain bacteria that could cause infection in users with weak immune systems.

Here is the real thing. Here is the counterfeit. And quite frankly, there is very little way for the consumer to tell the difference.

We have got to find tougher laws to get these off the market. The only way you can tell these two containers apart is with the recycling markings on the bottom of the bottle. The labels are nearly identical.

Substandard counterfeit parts in automobiles and airplanes endanger travelers. This includes defective brakes. We have with us two examples of brake shoes, one made properly by the legitimate manufacturer out of metal, the other made out of a composite type compressed wood that is clearly insufficient and defective and has caused automobile accidents.

Counterfeit versions of medications in medical equipment threaten the sick. These criminals stop at absolutely nothing. Not even our babies and children are safe from counterfeits.

A counterfeit version of a popular infant's formula was discovered on store shelves in 16 States. This fraudulent formula had the potential to kill children who may be allergic to it.

Ms. Angela Small is here to tell us about the problems that her company, which manufactures the Mighty Morphin Power Rangers, has had with counterfeits that threaten the safety of young children. While rare, counterfeit toys are a problem to which every parent must be attuned.

The job of parents playing Santa Claus each holiday season becomes increasingly more complicated. The economic impact of counterfeiting is substantial. The reputation of legitimate companies can be ruined because of a lack of consumer confidence resulting when lower quality counterfeit goods are on the market.

The U.S. Customs Service estimates that 750,000 jobs were lost due to foreign counterfeiting of U.S. products. In 1994, the U.S. software industry lost more than \$2.8 billion in piracy in North America alone. Once sold primarily in the black market, counterfeit software can now be found in retail stores fooling unwary customers and stripping the producers and sellers of legitimate sales.

Just look at the wide variety of counterfeit software I have here. Here is a genuine Microsoft Windows Program, including the hologram seal on the back. Here is a counterfeit Microsoft Windows Program with the hologram seal on the back. In fact, the hologram has the Windows logo in the hologram. These were on shelves shortly after the first legitimate sale and look how good the counterfeits have become. It is virtually impossible to tell the difference between the fake and the real thing, down to the hologram and certificate of authenticity.

One software disk was picked up by a software executive on the street in China for about \$6. This right here, has dozens of valuable software programs on it valued between \$10,000 and \$20,000—complete programs, not just portions of them. This would be an incredible loss of business to a number of different software producers. Although this counterfeit was produced in Asia, similar fakes are available throughout the United States.

Organized crime is cashing in on counterfeiting because the chances of going to jail are slim. There are low risks and high profits. These enormous profits can then be used to fund other criminal activities such as extortion and drug smuggling. Most counterfeiting is tied to other crimes.

Let's look at this fake designer bag discovered during a raid by the New Jersey State Police. Roughly 100 such handbags, cut open between the outer material and inner lining, were discovered in a shipment of more than 8,000 counterfeit bags worth over \$400,000. Drug sniffing dogs identified heroin residue that had leaked from packets that had been inserted and sealed into the phony bags. It appears that the bags imported from Korea had been loaded with narcotics in Asia and smuggled into this country disguised as counterfeit handbags.

Due to weak laws and inconsistent enforcement of existing laws, counterfeiting provides a unique, relatively risk-free avenue for them to pursue other activities such as drug trafficking. My legislation will make counterfeiting a more serious offense by increasing criminal penalty and jail time for trafficking in counterfeit goods.

It calls for greater involvement by all Federal law enforcement agencies, including the FBI, U.S. Marshals, Secret Service, Post Office and Customs in combating counterfeiting. It will prevent seized goods from reentering the marketplace by requiring those goods to be destroyed. Existing statutes are strengthened and civil fines are increased by taking them to the value of genuine goods.

In addition, statutory damage awards of up to \$1 million per trademark are provided. Product counterfeiting and piracy are out of control. Criminals involved in this activity are increasingly more sophisticated, organized, and ruthless. My legislation will give law enforcement the tools it needs to make our fight against counterfeiting as sophisticated and modern as the crime itself.

I welcome our witnesses and look forward to your testimony.

Mr. MOORHEAD. Thank you.

[The prepared statement of Mr. Goodlatte follows:]

PREPARED STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF VIRGINIA

Mr. Chairman, I want to thank you for holding this hearing on the Anticounterfeiting Consumer Protection Act of 1995 which I introduced in the House of Representatives on October 19. I also greatly appreciate your strong support of this important legislation which will strengthen the ability of law enforcement to combat the rapidly growing problem of counterfeit goods and services.

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No one should be fooled into believing that counterfeiting is just a penny ante, victimless, crime involving five dollar fake Rolex watches and Ray Ban sunglasses. We will hear from today's witnesses that it has a huge price tag attached—with over \$200 billion in lost revenue each year. We are talking about highly sophisticated criminal activity involving billions of dollars, high-tech equipment, organized crime, gangs and terrorists.

Sadly, we are also talking about an activity that potentially threatens the health and safety of every one of us.

Many of you probably saw this ad back in August, voluntarily run nationwide the manufacturer of a popular antidandruff shampoo warning consumers that counterfeits of their product contained bacteria that could cause infection in users with weakened immune systems.

Substandard counterfeit parts in automobiles and airplanes endanger travelers. Counterfeit versions of medications and medical equipment threaten the sick.

These criminals stop at absolutely nothing; not even our babies and children are safe from counterfeits. A counterfeit version a popular infant formula, was discovered on store shelves in sixteen states. This fraudulent formula had the potential to kill children who may be allergic to it. Ms. Angela Small is here to tell us about the problems that her company which manufactures the Mighty Morphin Power Rangers has had with counterfeits that threaten the safety of young children. While rare, counterfeit toys are a problem to which every parent must be attuned. The job of parents playing Santa Claus this holiday season has become increasingly more complicated.

The economic impact of counterfeiting is substantial. The reputation of legitimate companies can be ruined because of the loss of consumer confidence resulting when lower quality counterfeit goods are on the market. The U.S. Customs Service estimates that 750,000 jobs were lost due to reign counterfeiting of U.S. products.

In 1994 the U.S. software industry lost more than \$2.8 billion to piracy in North America alone. Once sold primarily in black markets, counterfeit software can now be found in retail stores, fooling unwary customers and stripping the producers and sellers of legitimate sales.

Just look at the wide variety of counterfeit software I have here. Knockoffs of Microsoft's Windows 95 were on the shelves shortly after the first legitimate sale—and look how good the counterfeits have become. It is virtually impossible to tell

the difference between the fake and the real thing—down to the hologram and certificate of authenticity.

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And most counterfeiting is tied to other crimes, just look at this fake designer handbag discovered during a raid by the New Jersey state police. Roughly one hundred such handbags cut open between the outer material and the inner lining were discovered in a shipment of more than 8,000 counterfeit bags worth over \$400,000. Drug sniffing dogs identified heroin residue that had leaked from packets that had been inserted and sealed into the phoney bags. It appears that the bags, imported from Korea, had been loaded with narcotics in Asia and smuggled into this country disguised as counterfeit handbags. Due to weak laws and inconsistent enforcement of existing laws, product counterfeiting provides a unique relatively risk-free opportunity for criminals to pursue other activities such as drug trafficking.

My legislation will make counterfeiting a more serious offense by increasing criminal penalties and jail time for trafficking in counterfeit goods. It calls for greater involvement by all federal law enforcement agencies including the FBI, U.S. Marshals, Secret Service, Post Office and Customs in combating counterfeiting.

It will prevent seized goods from re-entering the marketplace by requiring those goods to be destroyed. Existing statutes are strengthened and civil fines are increased by pegging them to the value of genuine goods. In addition, statutory damage awards of up to \$1 million per trademark are provided.

Product counterfeiting and piracy are out of control. Criminals involved in this activity are increasingly more sophisticated, organized and ruthless. My legislation will give law enforcement the tools it needs to make our fight against counterfeiting as sophisticated and modern as the crime itself.

I welcome our witnesses and look forward to your testimony.

**Mr. MOORHEAD.** There are still a few seats in there if you want to find them so you don't have to stand up.

We will have two panels this morning. Our first witness will be Mr. Philip J. Hampton II, who is the Assistant Commissioner for Trademarks, for Patent and Trademark Office, U.S. Department of Commerce. Until his nomination, he served on the board of governors of the National Bar Association and as a member of its executive committee. He holds a bachelor's and master's degree from the Massachusetts Institute of Technology and a law degree from the University of Chicago. We welcome Assistant Commissioner Hampton.

Also here today is Mr. Steve Walton, the Deputy Assistant Commissioner, Office of Investigations, for the U.S. Customs Service. Mr. Walton is responsible for the investigative, interdiction and intelligence services of the Customs Service. These missions include investigating counterfeiting, drug smuggling, money laundering, and other criminal operations. Mr. Walton is a graduate of the University of Maine, and he is a Navy veteran. Mr. Walton will not be testifying, but he has graciously agreed to answer questions we may have about his experiences with combating criminal counterfeiting.

Welcome, Deputy and Commissioner Walton. We have a written statement from our first witness, Mr. Hampton. I ask unanimous consent that it be made a part of the record. I also ask that you please summarize your statement in 10 minutes or less, to the extent that you can, although there is no bell that is going to go off. Thank you.

**STATEMENT OF PHILIP G. HAMPTON II, ASSISTANT COMMISSIONER FOR TRADEMARKS, PATENT AND TRADEMARK OFFICE, U.S. DEPARTMENT OF COMMERCE**

Mr. HAMPTON. Good morning, Mr. Chairman and members of the subcommittee. I am Phil Hampton, the Assistant Commissioner for Trademarks, the Patent and Trademark Office. This morning I am joined by two of my colleagues from the PTO, Ms. Carlisle Walters, an attorney specializing in trademark law, and Mr. Peter Fowler, an attorney specializing in copyright law.

I am honored to be here today and I would like to thank the chairman and members of the subcommittee for providing me with this opportunity to present the administration's views on H.R. 2511.

H.R. 2511, the Anticounterfeiting Consumer Protection Act of 1995, is a critical piece of legislation which proposes to amend existing law to strengthen provisions for seizing and exposing of counterfeit goods, prosecuting counterfeiters and those connected with counterfeit activity, and establishing penalties, both civil and criminal, to act as an effective deterrent to counterfeit activity.

I wish to thank the chairman and members of this subcommittee for the time and study they have devoted to this important activity.

As the Assistant Commissioner for Trademarks, I am concerned that the unchecked proliferation of counterfeit products, both in the United States and abroad, will undermine the viability of legitimate U.S. businesses and trivialize U.S. intellectual property owners and intellectual property in general, one of the most important assets of this country.

Trademark and copyright owners have demonstrated that counterfeiting of U.S. products is increasing worldwide; that serious criminal elements are becoming involved in counterfeiting activity; and that losses to U.S. businesses are substantial and growing. This is truly troubling news.

In preparing for this testimony, I was particularly struck by a recent statement made by Dempster Leech, a private investigator. In his testimony prepared for the Senate Judiciary Committee's hearing on the companion Senate bill, Mr. Leach stated that of all the criminal activities undertaken by one of the most notorious New York-based gangs, watch counterfeiting was the steadiest source of income. The gang wasn't just making counterfeit watches, it was involved in a range of criminal activities, including violent crimes, all funded by illicit profits made from the sale of counterfeit watches. This demonstrates why H.R. 2511 is important. Counterfeiting has become a big business for criminals.

During the last decade, Congress has responded to the increase in trademark counterfeiting by passing the Trademark Counterfeiting Act of 1984. This law established civil and criminal remedies to curb the problems existing at the time. It is clear that almost 10 years later additional legislative action is necessary to effectively prevent counterfeit activities in today's marketplace to seize and dispose of counterfeit goods and to adequately compensate trademark and copyright owners for their losses and for damage to the goodwill enjoyed by their businesses and the reputations of their products.

Establishing effective enforcement regimes to protect intellectual property and to stop counterfeit activity worldwide has been a high priority in bilateral discussions with our trading partners. The United States needs strong and effective anticounterfeiting laws such as those proposed in H.R. 2511 to set a standard for the rest of the world and to give our negotiators credibility in these discussions. Therefore, the administration supports this bill as a crucial measure to stop the importation and distribution of counterfeit goods in the United States.

In my testimony, I will discuss the bill in the context primarily of the technical proposals suggested by the PTO. These technical proposals are intended to improve the clarity and effectiveness of the provisions of the bill where it raises issues which are within the PTO's area of expertise.

To this extent, my comments today represent the position of the administration with respect to H.R. 2511. However, I will defer to the Departments of Justice and Treasury with respect to those issues within the expertise of those agencies.

Because the bill seeks to effect changes to a number of different laws, I will briefly summarize the provisions of the bill relevant to our technical proposal. Again, I would like to emphasize that we believe the enactment of this bill would make a significant step toward—forward in the fight against counterfeit activity.

Section 2 of the bill would amend the racketeer influence and corrupt organizations' law, RICO, to include counterfeit activity in the definition of racketeering activity. This provision would add to existing civil and criminal remedies for counterfeiting.

Specifically, the bill would include in the definition of "racketeering activities" acts presently indictable under title 18 in section 2318, which pertains to trafficking in counterfeit labels for phony records and copies of motion pictures or other audiovisual works, section 2319, which pertains to criminal infringement of copyrights, and section 2320, which pertains to trafficking in counterfeit goods and services.

The administration supports this amendment. However, the PTO recommends that this section of the bill be further amended to include as a racketeering activity under RICO section 2319(a), title 18, which pertains to the unauthorized fixation of trafficking in sound recordings and music videos of live musical performances. Individuals or entities involved in such bootlegging, the activity prescribed in section 2319(a), should be subject to the same penalties as other counterfeiters.

Section 3 of the bill would amend title 18 prohibiting trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works. It would also prohibit the activity of knowingly trafficking in counterfeit labels related to computer programs or computer program documentation or packaging.

The administration vigorously supports this amendment. However, the PTO believes that there may be some ambiguity in the proposed language. Therefore, we respectfully suggest three amendments to this section of the bill. These amendments are detailed in our written submission. We believe that the changes would clarify the intent of this section.

Section 5 of the bill would amend the provision of section 34 of the Trademark Act of 1946 regarding civil actions arising from the use of counterfeit marks.

Section 5 would expand the list of persons who may carry out seizure orders under the section and authorize a court to order the seizure of an aircraft, vehicle, or vessel used in connection with a violation of the Lanham Act.

As detailed in our written submission, the PTO respectfully recommends for the purposes of clarity and consistency that this later provision be moved within section 34 of the Lanham Act.

Section 6 of the bill would amend section 34 of the Lanham Act regarding injunctive relief and civil actions arising under the Lanham Act by adding a new subsection which in part mandates destruction by the appropriate Federal official of counterfeit merchandise seized pursuant to section 42 of the Lanham Act. This action could be taken after notice to the trademark owner unless the goods do not present a health and safety hazard and the trademark owners consent to otherwise dispose of the goods obtained. If the goods are not destroyed, the section requires the obliteration of the trademark and distribution of the goods in a manner specified in the section.

The PTO respectfully points out that this provision would appear to be parallel to but inconsistent with the analogous provisions of section 1526(d) of title 19. The PTO would be pleased to work with the subcommittee to develop appropriate and consistent language for this provision.

Section 7 of the bill would amend section 35 of the Lanham Act pertaining to monetary relief, to establish statutory damages in cases involving the use of a counterfeit mark in lieu of actual damages and profits.

The administration supports this amendment. However, the PTO believes that there may be some ambiguity in the proposed language. Therefore, as detailed in our written submission, we respectfully recommend a small change in the language in this section of the bill.

Section 9 of the bill would amend section 42 of the Lanham Act forbidding the importation of goods bearing infringing marks or names, in part to require disclosure of certain information and custom entry documentation as necessary for Customs to determine if a trademark infringement exists.

As drafted, this provision would mandate an increase in the amount and kind of information Customs currently requires at entry because Customs would have to require specific information to determine whether the imported merchandise bears an infringing trademark. This could increase the paperwork requirements imposed on importers at the time—at the same time the Customs Service is attempting to streamline its entry procedures.

The administration is concerned about the potential adverse effects of delaying statistical information on imports that is likely to result from the entry documentation requirements in this section. Therefore, we respectfully suggest that this provision be amended so that the document requirements will not unduly impede Customs' and the Economic and Statistical Administration's efforts to efficiently process import documentation.

This would ensure that goods entering the United States will not be unduly delayed and that statistical import information may be timely released for balance of trade and other purposes. The administration would be happy to work with the subcommittee on this amendment.

In conclusion, I would like to reiterate the administration's support for this bill. We believe that the bill will contribute substantially to the eradication of counterfeit products in the United States. We believe that this is a laudable goal and that the bill will increase the effectiveness of U.S. law yielding immediate positive effects in its battle against counterfeiting.

I recommend that the changes we propose be made to improve the clarity and effectiveness of H.R. 2511. I want to repeat that the PTO would be pleased to provide technical assistance to the subcommittee should it wish to pursue the points we raised or any other matters related within the PTO's area of expertise.

Finally, I wish to thank the sponsors of this bill for their leadership and the chairman and the subcommittee for their strong interest in this bill to strengthen our anticounterfeiting laws in the United States. I would be pleased to answer any questions the committee may have concerning my testimony.

Mr. MOORHEAD. Thank you, Mr. Hampton.

[The prepared statement of Mr. Hampton follows:]

PREPARED STATEMENT OF PHILIP G. HAMPTON II, ASSISTANT COMMISSIONER FOR TRADEMARKS, PATENT AND TRADEMARK OFFICE, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman and Members of the Subcommittee, I am Philip Hampton, the Assistant Commissioner for Trademarks at the U.S. Patent and Trademark Office. I am honored to be here today, and I would like to thank the Chairman and the Members of this Subcommittee for providing me with this opportunity to present the Administration's views on H.R. 2511. H.R. 2511, the Anticounterfeiting Consumer Protection Act of 1995, is a critical piece of legislation which proposes to amend existing law to strengthen the provisions for seizing and disposing of counterfeit goods, for prosecuting counterfeiters and those connected with counterfeit activity, and for establishing penalties, both civil and criminal, to act as an effective deterrent to counterfeit activity.

I wish to thank the Chairman and Members of this Subcommittee for the time and study they have devoted to this important activity.

As the Assistant Commissioner for Trademarks at the U.S. Patent and Trademark Office (PTO), I am extremely concerned that the unchecked proliferation of counterfeit products, both in the United States and abroad, will seriously undermine the viability of legitimate U.S. business and trivialize U.S. intellectual property, one of our most important assets. Trademark and copyright owners have demonstrated that counterfeiting of U.S. products is increasing worldwide; that serious criminal elements are becoming involved in counterfeiting activity; and that losses to U.S. businesses are substantial and growing. This is troubling news. I was particularly struck by a recent statement made by Dempster Leech, a private investigator, in testimony prepared for the Senate Judiciary Committee's hearings on the senate companion bill to H.R. 2511, S. 1136. Mr. Leech stated that, of all the criminal activities undertaken by one notorious New York-based gang, watch counterfeit was their steadiest source of income. This gang wasn't "just" making counterfeit watches—it was involved in a range of criminal activities, including violent crimes, all funded by illicit profits made from the sale of counterfeit watches. This is why H.R. 2511 is important: counterfeiting has become big business for criminal elements.

Effective measures are needed to prevent counterfeit activity, to seize and dispose of counterfeit goods, and to compensate trademark and copyright owners for their losses and damage to the good-will enjoyed by their businesses and the reputation of their products. Such measures have, of course, been the subject of bilateral discussions with our trading partners. Strong and effective U.S. anti-counterfeiting laws, such as those proposed in H.R. 2511, are necessary to set a standard for the rest of the world and to give our negotiators credibility in these discussions. There-

fore, the Administration supports this bill as a crucial measure to stop the importation and distribution of counterfeit goods in the United States.

In my testimony, I will discuss the bill in the context primarily of the technical proposals suggested by the PTO. These technical proposals are intended to improve the clarity and effectiveness of the provisions of the bill where it raises issues that are within the PTO's area of expertise. To this extent, my comments today represent the position of the Administration with respect to H.R. 2511. However, I will defer to the Departments of Justice and Treasury with respect to those issues within the expertise of those agencies.

For the sake of clarity, I will briefly summarize the provisions of the bill. Again, I would like to emphasize that we believe enactment of this bill would mark a significant step forward in the fight against counterfeit activity.

SYNOPSIS OF H.R. 2511, "THE ANTICOUNTERFEITING CONSUMER PROTECTION ACT OF 1995"

Section 2 ("Counterfeiting As Racketeering") of the bill amends § 1961(1)(B) of the Racketeer Influenced and Corrupt Organizations Law (RICO), 18 U.S.C. § 1961(1)(B), to include counterfeit activity in the definition of "racketeering activity." Pursuant to RICO, such activity is prohibited and may be the subject of an *ex parte* temporary restraining order for seizure of property and subject to criminal penalties, including disposition of property (18 U.S.C. § 1963) and subject to civil remedies, action for which may be sought by the U.S. Attorney General or the injured party (18 U.S.C. § 1964).

Section 3 ("Application to Computer Programs, Computer Program Documentation, or Packaging") of the bill amends 18 U.S.C. § 2318, regarding trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works, to add the activity of knowingly trafficking in a counterfeit computer program or computer program documentation or packaging as a prohibited activity subject to the penalties provided in the section.

Section 4 ("Trafficking in Counterfeit Goods or Services") amends 18 U.S.C. § 2320, regarding trafficking in counterfeit goods or services, to require the Justice Department to include cases pertaining to counterfeiting in its periodic report required under 28 U.S.C. § 522.

Section 5 ("Seizure of Counterfeit Goods") amends section 34(d)(9) of the Trademark Act of 1946 (Lanham Act), 15 U.S.C. § 1116(d)(9), regarding civil actions arising from the use of counterfeit marks, to expand the group of persons who may carry out seizure orders under the section; and to authorize a court in a civil action to order seizure of an aircraft, vehicle, or vessel used in connection with a violation under the Lanham Act.

Section 6 ("Disposition of Merchandise Bearing Counterfeit American Trademark and Civil Penalties"), amends section 34 of the Lanham Act, 15 U.S.C. § 1116, regarding injunctive relief in civil actions arising under the Lanham Act, to mandate destruction by the appropriate Federal official of seized counterfeit merchandise, after notice to the trademark owner, unless the goods do not present a health and safety hazard and the trademark owner's consent is obtained, in which case the trademark shall be obliterated and the goods may be distributed as specified in the Section; and to provide civil fines, at the court's discretion, as specified in the Section for first and subsequent seizures under the Section, for persons who direct, assist financially or otherwise, or are in any way concerned with the importation for sale or public distribution of the merchandise seized.

Section 7 ("Recovery for Violation of Rights") amends section 35 of the Lanham Act, 15 U.S.C. § 1117, regarding monetary relief, to establish statutory damages in cases involving the use of a counterfeit mark, in lieu of actual damages and profits.

Section 8 ("Disposition of Excluded Articles") amends § 603(c) of the Copyright Act, 17 U.S.C. § 603(c), regarding import prohibitions, to delete the provision permitting Customs to return the goods to the country of export. By this amendment, destruction of the prohibited goods is required.

Section 9 ("Recordkeeping Requirements") amends section 42 of the Lanham Act, 15 U.S.C. § 1124, forbidding the importation of goods bearing infringing marks or names, to permit trademark registrants, authorized users or their agents to obtain from appropriate Federal officials certain information contained in vessel and aircraft manifests and to require disclosure of certain information in customs entry documentation as necessary for Customs to determine if a trademark infringement exists.

## PROPOSALS TO AMEND H.R. 2511

The Administration supports H.R. 2511. We believe that the bill will contribute substantially to the eradication of counterfeit products in the United States. We believe that this is a laudable goal and that the bill will increase the effectiveness of U.S. law and yield immediate positive effects in the battle against counterfeiting. In the spirit of further ensuring the effectiveness of this bill, the PTO offers several technical comments that we believe will add to the clarity of the language proposed in Sections 2, 3, 5, 6, and 7, as described below. Additionally, the Administration expresses its concern with the entry documentation required in Section 9 of the bill, as described below.

1. Section 2, "Counterfeiting as Racketeering," of H.R. 2511 proposes to expand the definition of "racketeering activity" under 18 U.S.C. § 1961(1)(B) to include acts indictable under 18 U.S.C. § 2318 (pertaining to trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works), 18 U.S.C. § 2319 (pertaining to criminal infringement of a copyrights, and 18 U.S.C. § 2320 (pertaining to trafficking in counterfeit goods or services).

Section 2 should be further amended to include 18 U.S.C. § 2319A (pertaining to the unauthorized fixation of, and trafficking in, sound recordings and music videos of live musical performances) within the list of indictable acts under 18 U.S.C. § 1961(1)(B). Individuals or entities involved in "bootlegging," the activity proscribed in 18 U.S.C. § 2319A, should be subject to the same penalties as other counterfeiters.

2. Section 3, "Application to Computer Programs, Computer Program Documentation, or Packaging," of H.R. 2511, amends 18 U.S.C. § 2318 (pertaining to trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works) to prohibit the trafficking in counterfeit labels related to computer programs. We support this amendment. However, the PTO believes there may be some ambiguity in the proposed language. The bill would insert in the list of objects to which a counterfeit label may not be affixed the phrase "computer program or computer program documentation or packaging." While it is trafficking in counterfeit labels affixed to copies of computer programs that should be prohibited, in the case of computer program *documentation and packaging*, the problem is actually counterfeit documentation and packaging (not counterfeit labels affixed to such documentation and packaging).

The PTO respectfully suggests that the legislative history of the H.R. 2511 or the amendment itself should make clear that the amendment is intended to prohibit the trafficking in counterfeit computer program *documentation and packaging*. The PTO would be happy to work with the Subcommittee on this clarification.

The second ambiguity we perceive in the amendment to Section 2318 may also warrant the insertion of the phrase "a copy of" before "a motion picture or other audiovisual work," to make clear that the prohibition relates to labels affixed to a copy of a motion picture (i.e., the material object in which the motion picture fixed), rather than the motion picture itself.

Third, consistent with the amendment to Section 2318(a), the bill would also amend Section 2318(c)(3) to include "a copy of a computer program or computer program documentation or packaging." In this subsection, however, we believe the word "copyrighted" should be inserted to modify "computer program," since the current subsection refers to copyrighted motion pictures and copyrighted sound recordings.

3. The first sentence in Section 5, "Seizure of Counterfeit Goods," amends section 34(d)(9) if the Lanham Act to grant a court the authority to order the seizure of an aircraft, vehicle or vessel used in connection with a violation under the Lanham Act. The PTO recommends that, for purposes of clarity and consistency, the proposed sentence in the bill should be added, instead, to section 34(d)(1)(A) of the Lanham Act. It is section 34(d)(1)(A) of the Lanham Act that authorizes a court, in a civil action under the Lanham Act with respect to specified uses of a counterfeit mark, to grant an order, upon *ex parte* application, for the seizure of specified goods, records and property. Whereas, Section 34(d)(9) of the Lanham Act specifies who is authorized to serve and carry out the seizure order. The sentence in the bill expands the nature of the goods, records and property that may be seized under section 34(d)(1)(A) of the Lanham Act.

4. Section 6 ("Disposition of Merchandise Bearing Counterfeit American Trademark and Civil Penalties") amends section 34 of the Lanham Act to add a new subsection which provides for seizure by the appropriate Federal official of merchandise bearing a counterfeit mark imported into the United States in violation of section 42 of the Lanham Act and establishes standards for disposition of the seized merchandise by the appropriate Federal official. These provisions would appear to be parallel to, but inconsistent with, the provisions of 19 U.S.C. § 1526(e). The PTO

would be pleased to work with the Subcommittee to develop appropriate and consistent language for this provision.

5. Certain language amending section 35 of the Lanham Act in Section 7, "Recovery for Violation of Rights," of H.R. 2511 should be clarified. The subsection, as it currently appears in the bill, is reproduced below and the language we believe to be vague is underlined:

(c) In a case involving the use of a counterfeit mark (as defined in section 34(d) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a), an award of statutory damages *for any such use* in the amount of—

- (1) not less than \$500 or more than \$100,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or
- (2) if the court finds that the use of the counterfeit mark was willful, not more than \$1,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.

In the language set out above, we believe that it is unclear what the phrase "for any such use" pertains to. We recommend that the phrase be deleted to clarify that the statutory damages pertain to the use of a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services.

6. Section 9 of the bill would amend section 42 of the Lanham Act, forbidding the importation of goods bearing infringing marks or names, in part, to require disclosure of certain information in customs entry documentation as necessary for Customs to determine if a trademark infringement exists.

As drafted, this provision would mandate an increase in the amount and kind of information customs currently requires at entry because Customs would have to require specific information to determine whether the imported merchandise bears an infringing trademark. This could increase the paperwork requirements imposed on importers at the same time the Customs service is attempting to streamline its entry procedures. We are concerned about the potential adverse effects of delaying statistical information on imports that is likely to result from the entry documentation requirements in this Section.

The Administration respectfully suggests that this provision be amended so that document requirements will not unduly impede Customs' and the Economic and Statistical Administration's efforts to efficiently process import documentation. This would ensure that goods entering the United States will not unduly delayed and that statistical import information may be timely released for balance of trade and other purposes. The Administration would be happy to work with the Subcommittee on this amendment.

#### CONCLUSION

In conclusion, I reiterate the Administration's support for this bill and I recommend that the changes proposed above be made to improve the clarity and effectiveness of H.R. 2511. I want to thank the sponsors of this bill for their leadership, and the Chairman and the Subcommittee for their strong interest in this bill to strengthen anticounterfeiting laws in the United States. I would be pleased to answer any questions the Committee may have concerning my testimony.

Mr. MOORHEAD. Mr. Walton, many people associate counterfeiting with small street corner operations selling wrist watches and sunglasses. However, I understand organized crime plays a large and consistently growing role.

Can you elaborate on your agency's firsthand experiences with links between organized crime and counterfeiting, specifically Operation Pipeline?

#### STATEMENT OF LEONARD S. WALTON, DEPUTY ASSISTANT COMMISSIONER, OFFICE OF INVESTIGATIONS, U.S. CUSTOMS SERVICE

Mr. WALTON. Yes, Mr. Chairman, thank you.

I think what we have seen over the last—hard to put a time frame on it, but say 5 to 10 years, is the evolution of counterfeit trafficking, IPR-type activity from the kind of miscellaneous street vendor sort of universe of activity to the highly organized, very complex and, quite frankly, quite sophisticated sort of criminal organizational structure that takes into account a very large market of activity involving millions of dollars of goods on a national and international scale.

There are a lot of different reasons for that. I would say at the outset that the analogy I would make is to drug organizations. The structure is not all that different. In some cases, some of the counterfeiters are in fact drug marketeers themselves in one form or another and the sophistication associated with these large organizations and the products manufactured, some examples. This sort of thing is much more sophisticated than you used to see.

And recently our activities in New York with the Operation Pipeline kind of taught us how sophisticated this whole area of marketing and manufacturing of counterfeit goods has become. Very elaborate software programs that—for example, with regard to counterfeit clothing, there were some ski wear, I can't remember which trademark holder, even some of our really best people couldn't tell the difference because of just the process, the quality of the process of the manufacturer.

In that case, which is still ongoing, but at the time that we executed the Operation Pipeline arrest and seizures in New York and some other cities, we recovered approximately \$27 million in counterfeit goods. I believe there were 43 trademark holders that were affected.

It was a sophisticated organization, had very elaborate marketing and distribution networks from the street level on up. And there were millions of dollars involved in the trade. That—that was, I would have to say, 5 to 8 years ago, was relatively unheard of. And I think it is the linkage to other types of crime. It is not a crime, it is not a pattern of criminal activity that exists in a vacuum. It is linked to other things. It has almost now in my mind at least a definition that would be consistent with that of traditional organized crime where you have any number of different types of criminal activity being pursued by any one organization. And I—to my mind in my experience the last, well, 20 some years is that this is probably the biggest change.

Mr. MOORHEAD. Certainly a lot of the counterfeited products are shipped in from overseas from places. Members of this subcommittee have had a chance to go through the Customs operations in Miami and in New York City, in Los Angeles, places of that kind, and they seem to be doing a pretty fair job in those areas.

Do we have enough personnel to check the products that may be coming in in containers and other things of that sort on ships from overseas?

Mr. WALTON. Well, I guess one could make the argument there are never enough people given the volume of international trade and particularly the effect on international trade caused by the multilateral and other agreements which of course GATT, NAFTA, other things which have a tendency to increase international trade.

This problem of counterfeit goods, a lot like drugs, isn't going to be, from our perspective, really solved by examining every single thing that comes in. It is not the kind of thing that can be approached that way. Certainly intense examinations are good. We try to do as many as we can, all the rest of it.

Our approach, though, perhaps nationally and internationally because we do have international initiatives, is intended to dry up the source of the goods so that they don't come here and to have enough teeth in the law to discourage importers from engaging in that activity.

To answer your question, I guess I would have to say that we have as many people on it as we can and we have it done in a way wherein at the same time we are looking for drugs or we are looking for some other sort of specific type of violation, we are also looking for this. But given the volume of traffic, I am not sure I know what the rate of examination is, it is not my area, but I know we are looking at it as much as we can. But it is a difficult question.

Mr. MOORHEAD. Obviously, a large part of the counterfeited goods never come to the United States.

Mr. WALTON. Correct.

Mr. MOORHEAD. They are manufactured abroad; they are sold abroad.

Mr. WALTON. Correct.

Mr. MOORHEAD. But they take up the sales that would otherwise be made by the legitimate manufacturer of the product.

Do you have any suggestions about ways that we might get at this? I know through international agreement, getting other countries to enforce counterfeiting laws and so forth helps, but it would appear that there is a great deal of it, maybe most of it, that goes undetected. Do you have any suggestions?

Mr. WALTON. Well, I can say that probably going back maybe about 10 years when in the Customs Service at least we began trying to deal with this problem on a larger scale, an international scale, quite frankly we didn't get a lot of support from a lot of foreign governments in dealing with the problem.

In what has happened over the last 10 years through formal and somewhat informal processes, we are really beginning to solicit some cooperation from some foreign countries. Now how sincere it is or how lasting it will be is another matter. But we actually have efforts ongoing right now, for example, in China, to deal with this problem. We have personnel assigned there and we are trying to deal with it there.

I think, though, outside the law enforcement perspective, the only way to me internationally that you can bring about the degree of cooperation necessary to have any kind of meaningful or lasting addressing of the problem by foreign nations is to treat it as a very high diplomatic priority and I am not sure necessarily the United States has ever done that. But to me ultimately that is where this is going to have to go. It is not strictly a law enforcement problem in the same sense that drug smuggling is not a law enforcement problem.

Law enforcement can do so much. And while law enforcement international initiatives are growing, the World Customs Organiza-

tion now has taken this on in a series of resolutions: There is more international activity; there is more international cooperation at the law enforcement level. I don't think that is going to be enough and I think that perhaps there probably ought to be a greater profile of it in the international arena. That is just my personal opinion.

Mr. MOORHEAD. Mr. Hampton, can you explain how valuable a trademark is to some companies and how counterfeiting can affect that value?

Mr. HAMPTON. Again, there are some companies that—in this country where their primary asset is their trademark, I think that counterfeiting, as was stated earlier, can cost some companies up to 40 percent of their profit margin because of counterfeited goods.

For example, Microsoft I think is a prime example of a major corporation that is losing a substantial amount of money because of counterfeits. It is very hard for me inside the Trademark Office to give you a current dollar figure and I will defer to INTA and the other witnesses on the second panel which will be able to give you a more graphic demonstration of how this money is actually being lost.

Mr. MOORHEAD. Do you believe that invoking the provisions of RICO is the most effective way to address the connection between organized crime and commercial counterfeiting?

Mr. HAMPTON. I don't know if it is the most effective way but I think it would—it would definitely help, you know, because RICO definitely would raise the ante for counterfeiters.

I think it is, you know, it is very important that RICO be used so that we can get to the—almost like the secondary counterfeiters, the people in the entire counterfeiting operation and not necessarily the person actually selling the counterfeit goods. I think that is one of the reasons why the RICO provisions are probably a good thing. But again, I would like to defer specifics on that to the Department of Justice.

Mr. MOORHEAD. John Conyers is the ranking minority member of the full Judiciary Committee and he is here with us today. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

As a cosponsor of this bill, I am pleased that we are moving forward with it. The couple of points that I need to make are that we are approaching this from a criminal and civil point of view to try to close the loopholes that are created by some of the existing legislation.

I am a strong RICO antiracketeering statute supporter. It does raise the ante, treble damages, and it gives the offended person the right to really go after somebody. It makes a big difference, which is why RICO laws are on the books, by the way.

In addition, my interest was stimulated by our recent trip to the Far East in which this subcommittee got firsthand from many of our corporate representatives what was going on and it opened our eyes to the problems. When you start talking about 40 percent of a computer software industry's things are being ripped off, we went into factories where this process was going on and it was a real eye opener.

In the auto industry alone, probably over 200,000 more people would be working if auto parts forgers, counterfeiters, were put out of business. And so from the point of view of Chrysler, Ford, General Motors, and others, that is a very big issue.

And of course this is not—we are not talking petty thieves and individual larcenists now. We are talking about crime syndicates, and the drug issue is now moving in very swiftly in this same kind of activity. So I think the legislation is right on time and we will be cooperating, I am sure, with you and all of our other witnesses to make sure that we get a bill that is as effective as possible and then follow through to make sure that it is enforceable and see where we go from there. So all of your suggestions and ideas will, I am sure, will be well received.

Thank you very much.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF MICHIGAN

I am pleased to be a co-sponsor of this bill which gives law enforcement officials and intellectual property owners a fighting chance against counterfeiters. The legislation is an additional step in ensuring that American jobs are not lost due the high cost of counterfeited goods being sold in the economy.

Technology has given the counterfeiters the upper hand. New technology allows products to be counterfeited easily and at low costs. We must therefore pass additional legislation to curb the current tide of counterfeited products.

Counterfeiters have created large and intricate profit-making organizations. Their activities are not limited to the sale of counterfeited products, but include drug smuggling and money laundering. Since, these organizations have become so complex, it is imperative that the RICO anti-racketeering statute be applied to trademark counterfeiters.

H.R. 2511 is a bill that we should support strongly. It closes loopholes in the law—both criminal and civil—that often let wrongdoers off when they steal works protected by our trademark and copyright laws.

In 1988 the International Trade Commission estimated that, at a minimum, counterfeiting had become a \$60 billion worldwide enterprise, and a more recent estimate by Forbes Magazine says that American businesses are losing over \$200 billion each year as a result of illegal counterfeiting.

Between 5–8% of all goods sold nationwide are counterfeit. In the computer software industry, the estimates are that 40% of the industry's total revenues are lost to counterfeited works. Countless American jobs are lost as a result of counterfeit goods.

The U.S. auto industry is particularly susceptible to theft of their products by counterfeiting, and estimates that it could employ another 210,000 people if it could manage to put counterfeit parts suppliers out of business.

Quite frequently, counterfeiting activity is associated with organized crime, particularly in parts of Asia. Less than three months ago coordinated raids in New York and Los Angeles led to the recovery of \$27 million in counterfeit merchandise and the indictments of 43 members of a Korean crime syndicate.

Counterfeiting is also a big public health matter. Everything from bogus birth control pills that caused unusual bleeding in women, numerous pharmaceuticals, and counterfeit toys with lethal lead paint chips have all been reported. Earlier this year, substandard counterfeited infant formula, bearing the false label of the well known Similac brand was sold in California and Kentucky prompting the FDA to issue warnings in fifteen states.

Earlier this year, I traveled to China on a fact finding mission. One of the issues of great concern was the illegal use of the Michigan-based Kellogg's company's logo by Chinese companies. Trademark infringement of corn flakes clearly supports the reality that any product with a trademark can be counterfeited and possibly used in other criminal activity.

This bill will make the necessary changes in both the criminal and civil laws to help prosecutors prosecute the syndicates, to give injured parties better relief in the courts, to ensure that counterfeited goods are destroyed, and to give copyright and

trademark owners tools that they can use as private individuals to check against importation of counterfeit goods.

Some of America's fastest growing industries, like computer software, motion pictures, record companies and songwriters, suffer the biggest losses due to piracy. These industries create thousands of jobs for America workers, and it is critical that we ensure that their rights are protected.

I want to acknowledge that this is a very important issue for American workers and the health of the American economy.

Mr. MOORHEAD. Mr. Goodlatte, the author of the bill.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Hampton, I very much appreciate the administration's support of the legislation and also welcome your constructive suggestions regarding changes to the bill which we will certainly review carefully.

One of those I would like to get you to elaborate on a little more deals with the provisions in section 9 that allow trademark owners to review certain shipping information. Won't that help prevent counterfeiting to have that in there? And would you elaborate on how you would differ on that?

Mr. HAMPTON. I think on section 9 I think the information is valuable, but again, there has to be a weighing between the value of this additional information and the inconvenience to legitimate importers by providing this information and also problems that could occur in terms of the ability of various economic reports to be timely distributed based on the gathering and collecting and analysis of data that is being held up on the front end.

Mr. GOODLATTE. I notice that you also propose some changes regarding provisions dealing with knowingly trafficking in counterfeit labels and you were specifically directing those toward some of the performance industry, the intellectual property industry.

It seems to me in looking at some of these things here I have, obviously Head and Shoulders gets a little beyond your area. But do you think that the bill should be a little tougher on people who actually participate in printing labels like this? Should we have some provisions requiring that people know that the labels they print are directed at the actual legitimate manufacturer of a product, whether it be intellectual property as is the concern of your agency, or anything else?

It concerns me that obviously it takes a very professional printer, maybe a part of a criminal organization or it may be something that is contracted out to a legitimate organization, but it concerns me that we obviously have very talented people making these counterfeit labels.

Mr. HAMPTON. I guess the only concern—I mean, I agree with your comments that again to make a label that good for Head and Shoulders shows that it is of high professional quality. I think that we are trying to make sure that we don't go too far, too sweeping in this issue, because I guess the real point is are we really worried about counterfeit labels or are we worried about trafficking in counterfeit goods. And there is at least some discussion within the administration that maybe it is like one step too far.

Mr. GOODLATTE. Right. But they are very directly related because the ease with which you can traffic these goods is I think very directly related with how easily you can fool the consumer. Obviously, printing and other manufacturing of the containers

which these products come in is very much directly related to that ease with which you can fool the consumer.

Mr. HAMPTON. I—again, I agree that—I agree with your points. I think we were just pointing out that we do want to be careful not to go too far and try to get in too many related—too many activities that might truly be unrelated to the counterfeiting activity.

Mr. GOODLATTE. Well, of course, that label is, in effect, a counterfeit itself.

Mr. HAMPTON. That is true. Again, I agree with you.

Mr. GOODLATTE. Mr. Walton, can you give us any idea of what percentage of all of the counterfeit products that are manufactured, either—well, let's take, since you deal with Customs, coming into this country can be intercepted by Customs?

Mr. WALTON. That is a very difficult question to answer, sir. I think basically we have found that whether it is with regard to these kinds of goods or with regard to any other kind of contraband that we are trying to detect that approximately 80 percent of the seizures or detections that we make are intelligence driven; that is, that we either have an active investigation within the Office of Investigations, my office, or there is some other indicator or profile. The idea of the cold interdiction is pretty much a passe concept with regard to pretty much everything, including drugs.

I think with the efforts that we have ongoing what we are trying to do obviously is go for the perfect record. And to do that we would like to have at least some information, some intelligence, perhaps even an active investigation, and to do that we are putting our emphasis into the international arena to work it from the source, much in the same respect we do with drugs or other things.

Other methodologies we employ, quite frankly, is a methodology we use in drugs, the control delivery. We deliberately let it in, and using law enforcement techniques, let it be delivered to an importer and keep it under surveillance, of course, and then when we feel—because we are trying to establish criminal knowledge—then we will employ basically our traditional methodologies to arrest and prosecute the violators.

The difficulty with interdicting it at the ports is that you don't always—you are not always able to get all of the elements of knowledge that you need to show whether the violation was willful, whether it was a result of negligence, or in some instances whether or not the importer was aware that there might be goods in the shipment, particularly in large importers.

So our methodology now is to basically go the extra steps in a law enforcement sense to establish that because we think that is the maximum impact of law. That is one of the reasons, by the way, that we so strongly favor RICO. RICO allows us to go after organizations. Law enforcement, the laws in this country basically are event specific, each importation, each transaction. Very hard to take apart an organization event by event. So with RICO, because of the tools that RICO provides, now we go after the organization, and that is a tremendous plus for us in our ability to deal with the large-scale activity.

So to answer your question in the short sum, using all of the tools we have available and all the methodologies that we have available, we would like to hit an 80-percent rate. We would like

to be able to become sufficiently knowledgeable about the different types of goods, the current markets and whatever to profile and screen all importations of those goods if in fact there are—they are being imported, and to working it internationally as well as here, employ all of our traditional law enforcement techniques to dismantle the organizations, destroy them, and if they are importers who are bringing these things in to establish the knowledge.

So you don't just make the seizures all the time and say, well, that was negligence or that won't happen again, you know, you are missing the knowledge elements. We want to carry these things to a sufficient degree to establish once and for all whether or not the importer knew that there were counterfeit goods being imported and then take them out of business.

Mr. GOODLATTE. Wouldn't that shipping information that we provide for in section 9 help you to establish that intent?

Mr. WALTON. Well, I have to tell you, sir, within the Customs Service this has been the subject of frank and candid discussion, I think is what they say here in Washington. Being law—I represent the agents, and to us everything is the embodiment of probable cause, and—but we have to understand the Customs Service is in a difficult position between its law enforcement responsibilities and trying to prevent at least undue burden on importers in terms of the importing process.

I will tell you this, that in—when we did the review of the Senate legislation and we looked at this, the Commissioner supported this concept of trying to establish some way in entry documentation, some means by which or in connection with which the importer would have to make a statement as to whether or not there were goods subject to any trademark or other special provision included. This does that. But within Customs—and Mr. Hampton has alluded to the general issue—there are obviously those who have tremendous responsibilities with regard to the trade community and all the rest of it and it is a balance.

From the law enforcement perspective, of course, I am allowed the luxury of having a gumshoe's mentality and of course the more we can get, the better from my standpoint. I don't know if that answers your question.

Mr. GOODLATTE. It does. Thank you.

Let me ask you, you mentioned control deliveries as one of the mechanisms you use to try to uncover the network and establish the criminal intent. Is that what is called Operation Pipeline?

Mr. WALTON. Pipeline involved a little of that, but yes, there were—we used a lot of things on Operation Pipeline because it was, as I think I may have mentioned before, one of the first times, and for many of our agents involved in the case, the first time we had ever seen an organization with that sophistication, complexity, engaged in an activity on such a broad scale. It was real eye opener.

A lot of these things, it didn't start that way. It—it began as a lot of these cases do, as kind of event driven, kinds of seemingly small market kinds of things, and as we got into it, we found out the level of complexity and the extreme high value of goods and whatever.

We did, I think, allow some stuff into the country on that through the west coast. I believe we did allow some shipments in

because if we had seized them it would have blown the whole thing. And we were trying to identify everybody that we could and trying to identify the full range of the organization.

The organization was so sophisticated that in the manufacture, if you will, of counterfeit wearing apparel—I seem to recall ski wear because I went to New York and I looked at it, they actually had a software program driven by computers that absolutely replicated the monogram or the symbol or the trademark. It was perfect.

I am trying to think of the names of some of the companies. There were 42 trademark holders. I am thinking particularly eye glasses. I know there were a lot of ski wear and a lot of other different things. And you could not distinguish the real trademark and they were doing these by the hundreds of dozens every day. So yes, we used a little of that.

I don't think that was our main tactic, but we used that as part of the process of preparing for the take-down which occurred basically over a period of 2 days. It was very complex because there were different locations and sites.

There were three in New York City alone. One of those was in Newark. And to get it set up and coordinated, execute the warrants and make all the arrests, we were dealing with a lot of street level gangs. These people are very hard to catch, so it is hard to set up a dormitory. It is very complex logistics, unlike anything I have seen except in a drug case. That is the only analogy I can draw.

Mr. GOODLATTE. How would this legislation help you in carrying out those types of operations?

Mr. WALTON. Well, there are several different elements in the legislation. I think probably the key one is the RICO because you know, we were working—obviously we were investigating an organization, but everything we were amassing in the context of our evidence was event specific. We really, for all the information that we had regarding what the organization was doing, we didn't have a lot that dealt with that and RICO would have done that. It probably would have allowed us to take it down a little earlier. I would say that with some certainty.

Mr. GOODLATTE. The Chairman mentioned the problem of goods being sold, manufactured overseas and sold overseas but with U.S. products that are being counterfeited and therefore losing U.S. sales. Another area of problem we have is the practice of reexportation of goods. Can you explain that and why that has become a problem?

Mr. WALTON. Well, yes. Until this legislation, my judgment anyway, addressed that issue, basically the detection of counterfeit merchandise, merchandise that would otherwise be prohibited, existing provisions of law allowed for the quote, reexport of the goods, which is, in our judgment, delaying the problem. The stuff will show up again, and we have run into that several times.

Mr. GOODLATTE. Or it will be sold somewhere else and have the same effect on U.S. manufacturers.

Mr. WALTON. Right. All it is doing is displacing the issue. Nobody who has invested in the manufacture of any goods and gone through all the trouble of finding a buyer or whatever is simply going to accept reexportation and take the goods back to the coun-

try from which they originated and contribute them to charity or something. That just isn't going to happen. The stuff is going to show up again. It might be transshipped through another country. It might be introduced in some other way. It might be sold and resold a couple of times to conceal the trail of the original parties to the transaction. There are several different ways.

This legislation addresses that problem because now we can get rid of this stuff. And we take that guesswork element out of it. We won't see that stuff again unless it comes in through a shredder or something. I mean, we will take care of it and this—this is, I think for us, very important.

We actually have had—and I have to tell you it is not just in this area. We have had contaminated seafood. We have had other attempted importations wherein the reexport provisions were invoked and the stuff shows up again. And so this addresses that problem, I would think, very nicely.

Mr. GOODLATTE. I thank both of you, and I thank the chairman.

Mr. MOORHEAD. I want to thank this panel very much for coming. The information you have given us will be very helpful.

Mr. MOORHEAD. Our first witness on panel two will be Ms. Catherine Simmons-Gill, president of the International Trademark Association and general counsel to General Media International, Inc. Ms. Simmons-Gill has also worked as chief trademark counsel to Sterling Winthrop, Inc., partner at the law firm Schaefer, Rosenwein & Fleming and senior counsel at Sears, Roebuck & Co. She holds bachelor's degrees from the University of Illinois at Chicago and Carleton College. She has a law degree from Northwestern University.

Welcome, Ms. Simmons-Gill.

Ms. SIMMONS-GILL. Thank you, Mr. Chairman.

Mr. MOORHEAD. I would also like to welcome a fellow Californian, Ms. Angela Small. Ms. Small is the vice president of Legal Affairs at Saban Entertainment, Inc., in Burbank. While you may not know of Saban Entertainment, you almost surely know of their popular television and film superheroes, the Mighty Morphin Power Rangers. Ms. Small oversees Saban Entertainment's legal actions against hundreds of civil and criminal infringers in the United States. Welcome, Ms. Small.

Our final witness is Mr. John Bliss, president of the International Anticounterfeiting Coalition. The IACC is a nonprofit trade organization dedicated to combating commercial counterfeiting worldwide. Mr. Bliss served for 2 years as the senior legislative and legal advisor to Senator Hank Brown and was the Republican chief counsel for the Technology and the Law, Juvenile Justice and Constitution Subcommittees of the Senate Judiciary Committee. Mr. Bliss is a graduate of the University of California in San Diego, has a law degree from Georgetown University. Welcome, Mr. Bliss.

We have your written statements, which I ask unanimous consent be made a part of the hearing record. I ask that you summarize in 10 minutes or less and that the members of the subcommittee hold their questions until all of the witnesses have ended their statements. We begin with Ms. Simmons-Gill.

**STATEMENT OF CATHERINE SIMMONS-GILL, PRESIDENT,  
INTERNATIONAL TRADEMARK ASSOCIATION**

Ms. SIMMONS-GILL. Thank you, Mr. Chairman, and good morning. My name is Catherine Simmons-Gill. I want to ask your indulgence for my lack of voice this morning. I seem to be dealing with the things that 9-year-olds bring home.

I am the president of the International Trademark Association, now known as INTA, and I am pleased to be here today to express our support for H.R. 2511, the Anticounterfeiting Consumer Protection Act of 1995. I am particularly pleased to be here today because I first became involved with anticounterfeiting legislation when I was asked by the general counsel of Sears to become involved in drafting the Anticounterfeiting Act of 1984 when a coalition was needed between the retailing community and the luxury goods community, so I have watched this sort of legislation from its inception.

We would also like to thank you, Congressman Goodlatte, for supporting the bill and sponsoring the bill and any other members of the panel who have sponsored this bill. It has been a little over a decade since the issue of counterfeiting has come first to the House and the Senate.

In 1984, in an effort to stem the importation, distribution and sale of counterfeit goods in the United States, Congress passed the Trademark Counterfeiting Act of 1984. In those days, it was clear to all of us that it was—there was almost an invitation to counterfeit various products and the most that one could expect to experience as a counterfeiter was an occasional civil suit where one ducked, said I won't do it again, closed up shop and moved somewhere else. There were no meaningful civil penalties and almost—and there were no criminal penalties, so it was a fairly good business then and without penalty.

When we testified in support of that measure, INTA testified in support of that measure in 1984, 1983 really, we noted that the problems of counterfeiting had reached substantial proportions and were of sufficient seriousness that stronger penalties were needed. We believe that even stronger penalties are needed now because while some—some effort has been made and most of the laws, as passed, have been used, we find that counterfeiting proliferates and it has gone from being what was essentially a cottage industry for the most part in the 1980's and 1970's to being a very organized activity, whether it is organized crime or simply organized.

In 1993, for example, Forbes magazine estimated that counterfeiting had grown to become a \$200 billion worldwide enterprise that is growing faster than any of the industries it victimizes. In addition, countless jobs, particularly in the United States, are lost as a result of counterfeit goods and counterfeit labels manufactured to go with various services.

Mr. Chairman, counterfeiting has had a devastating impact on the American economy and directly undermines the threefold purpose of the trademark laws that INTA is concerned to support in every country. Trademarks are intended to identify the goods and services of a particular trademark owner to differentiate them from other trademark owners' goods or services, and, most particularly, to provide assurances of quality to the public so that when one buys a Craftsman tool one day and goes back, one believes that one

will get the same quality the next day or the next month or the next year.

Every year we hear of new and more serious instances of legitimate companies having to spend hours of time and billions of dollars cultivating their trademarks and also protecting those trademarks from counterfeiting. At a 1993 raid in a New York City warehouse, for example, Congressman Goodlatte spoke about this earlier this morning, Louis Vuitton counterfeit handbags were used as a mask for a heroin activity. So it was really a rather clever ploy, I think, to bring in counterfeit bags where the crime believed was counterfeiting but in fact it masks a different activity and, indeed, it indicates that perhaps there is some substantial connection between traditional organized crime and counterfeiting organized crime.

Counterfeit goods not only threaten the reputation and dollar interests of trademark owners, they frequently pose a serious risk to the health and safety of the American public and, quite frankly, to other less sophisticated publics where American goods, which are extraordinarily valued in several other countries throughout the world, are sold—are sold, or counterfeit goods bearing American brands are sold to consumers who believe that simply because something is American, it is of value and it will meet, so to speak, the FDA health and safety standards.

When introducing this bill—pardon me, recently one of the facts which came to our attention was the investigation of the sale and distribution of an extraordinary amount of counterfeit baby formula that was in this country. We know what we have seized in this country. We have no idea what, if any, product went overseas. As a result of the imitation baby formula, FDA investigators believe that some infants may suffer allergic reactions or become severely undernourished or malnourished.

In addition, counterfeit mechanical parts called fasteners which cover what we grew up calling nuts and bolts but which are used in cars and helicopters, airplanes, and industrial machinery have clearly caused bodily injury, even death. In that case, anybody can make a bolt that looks like a very expensive airplane bolt but has not undergone the rigorous testing and the various levels of temperature required to make it a particular strength.

H.R. 2511 will help our Nation's efforts to put a stop to counterfeiting, in Senator Hatch's words, to knock out the knockoffs. For example, the bill makes trafficking in counterfeit goods and services predicate acts for the purposes of the RICO statute and, as discussed today, we all believe that these teeth are absolutely necessary. This will subject counterfeiters to substantially increased jail time, criminal fines, and asset forfeiture. These particular penalties seem to have actually had some effect on particular counterfeiters.

H.R. 2511 would also increase the power of Federal law enforcement in another vital area. The bill authorizes all Federal law enforcement officers to make *ex parte* seizures of counterfeit goods. We understand that Federal officers are extremely busy and that sometimes the seizing of counterfeit luxury goods does not—is not a top priority on their agenda if they have other more serious, clearly—clear crime affecting health and safety. So the ability of

any Federal officer to be able to make these ex parte seizures is extremely significant to trademark owners.

This provision will also allow for swifter execution of ex parte seizure orders, and as those of us who have stood outside of warehouses at 6 a.m. in the morning know, swiftness is extremely significant. We need to act within a very brief time of having found out the locus of either a manufacturing plant or a warehouse or it simply doesn't work, the information leaks out.

H.R. 2511 also provides that in cases of trademark counterfeiting owners may opt for an award of statutory damages up to \$1 million per mark for type of goods sold. This provision will put—will have a real effect and help put a dent in the pocketbooks of counterfeiters. Many of them do have legitimate bank accounts or other sorts of assets which can be seized and can be made the subject of civil fines or criminal fines, civil penalties, or civil fines.

The bill further authorizes the Customs Service to destroy counterfeit merchandise unless the owner of the mark in question or the owner of the copyright in question would permit another kind of disposition. I have found that where the goods can—where the labels can be successfully removed from clothing or other sorts of goods, in almost every case the Customs Service will permit the disposition of these items to charity. They are only destroyed when the labels or the logo become an integral part of the merchandise and distribution to charity does not mean that they are—they are shipped out of the United States and the disposition is permitted by the importer but in fact they are disposed of, you know, within the United States by the Customs office or by the trademark owner.

The bill also provides for the levying of civil fines against those who participate in the importation of counterfeit goods. The civil fines would equal the value of the merchandise if genuine.

The language of the bill also requires import documents to contain information to enable trademark owners to determine whether such goods bear an infringing mark.

I think that these are all positive steps and the members of INTA believe they will be extremely effective in helping them combat counterfeiting.

With respect to the issue of U.S. trademarks, I would like to suggest that there is no such thing anymore as a U.S. trademark or a French trademark or a Chinese trademark or South African trademark. We have a global economy and we have global communications. If communication is not of the standards variety like the television camera or books or the radio, it is simply the flow of goods in commerce. So U.S. trademarks have become multinational experiences as have French trademarks and Chinese trademarks, and whatever we can do in the United States to stem the flow of goods which pass through our commerce stream that are counterfeit would be helpful to the general economy.

In sum, it is our view that the reforms set forth in H.R. 2511 would represent a significant step forward in ensuring that owners of trademarks and the public are protected from the dangers and the loss of dollars associated with counterfeit goods.

We look forward to continuing to work with the members of the panel and its staff in assuring the passage of this important measure and its eventual enactment.

Thank you very much, and I look forward to questions if there are any at the end of the panel.

Mr. MOORHEAD. Thank you.

[The prepared statement of Ms. Simmons-Gill follows:]

PREPARED STATEMENT OF CATHERINE SIMMONS-GILL, PRESIDENT, INTERNATIONAL TRADEMARK ASSOCIATION

Mr. Chairman, the International Trademark Association (INTA) (formerly known as the United States Trademark Association), appreciates and welcomes the opportunity to submit a statement in support of H.R. 2511, the "Anticounterfeiting Consumer Protection Act of 1995." INTA believes strongly that this legislation represents a step forward in ensuring that owners of trademarks and the public are protected from the dangers associated with counterfeit goods.

My name is Catherine Simmons-Gill, and I presently serve as President of INTA. I am employed by INTA member General Media International as general counsel. Like all the officers, board members, committee chairpersons, and committee members of the Association, I serve on a voluntary basis.

INTA is a 117-year-old not-for-profit membership organization. Since its founding in 1878, its membership has grown from twelve New York based manufacturers to approximately 3,000 members that are drawn from across the United States, and from 110 countries.

Membership in INTA is open to trademark owners and to those who serve trademark owners. Its members are corporations, advertising agencies, professional and trade associations, and law firms. INTA's membership crosses all industry lines, spanning a broad range of manufacturing, retail and service operations. Members include both small and large businesses who have been both plaintiffs and defendants in disputes involving trademark rights, and all sizes of general practice and intellectual property law firms. What this diverse group has in common is a shared interest in trademarks, and a recognition of the importance of trademarks to their owners and to consumers.

THE ANTICOUNTERFEITING CONSUMER PROTECTION ACT OF 1995

*History*

Since the Lanham Act was passed in 1946, trademark counterfeiting has grown tremendously. This growth reflects consumers' increased desire for brand name products, the ability of counterfeiters to adapt to trends in the public's appetite, and the enormous profits that can be made from the sale of counterfeit goods. The inability to deter counterfeiters effectively, has enabled them to develop sophisticated and often multinational networks of manufacturing and distribution.

The "Trademark Counterfeiting Act of 1984" was a move in the right direction in an attempt to stem the manufacture, importation, and distribution of counterfeit goods in the United States. It represented Congress' initial efforts to protect American businesses and consumers against counterfeiting. Federal prosecutors and trademark owners now have at their disposal both civil and criminal remedies that make enforcement against counterfeiting more effective. The Act:

Created Sec. 2320 of the U.S. Criminal Code, which imposes severe penalties for intentional trafficking in counterfeit goods and services.

Amended Sec. 34 of the Lanham Act to provide for ex parte seizures. The Act allows trademark owners bringing a civil suit to obtain a court order to seize counterfeit goods and related business records without notice to defendant.

Amended the Lanham Act to provide enhanced civil penalties for trademark counterfeiting. A successful plaintiff in an action for counterfeiting ordinarily is entitled to recover treble damages and court costs.

INTA supported the introduction of the Anticounterfeiting Act of 1984 and applauded its passage. As a result of the provisions contained in the Act, trademark owners have greater protection against unlicensed uses and the public has greater assurance that the goods they purchase are genuine.

*Problems of Today*

Unfortunately, the "Trademark Counterfeiting Act of 1984" has been unable to completely stem the tide of counterfeit goods moving into and within the United States. In 1988, the International Trade Commission estimated that, at a minimum,

counterfeiting had become a \$60 billion worldwide enterprise. More recent estimates place the number as high as \$200 billion (see *Forbes*, 10/25/93, p. 170). In addition, countless American jobs are lost as a result of counterfeit goods. The U.S. auto industry alone, estimated it could employ another 210,000 people if it could manage to put counterfeit parts suppliers out of business (*Forbes*, p. 170).

The impact of counterfeit goods on trademark owners is overwhelming. A trademark serves to distinguish one's business products from all the others used in commerce and represents an investment in both dollars and time. To the consumer, a trademark symbolizes quality and characterizes confidence in the product.

For many companies, their trademark is their most valuable asset. In a 1994 study published in *Financial World*, for example, the "Coca-Cola" mark was valued at \$35.9 billion; the "Kodak" mark at \$10 billion; and the "Microsoft" mark at \$9.8 billion. These numbers demonstrate the major importance of trademarks to a healthy and growing economy.

Counterfeiting, on the other hand, has a devastating impact on our economy. Lost sales revenues, jobs, taxes, and customs duties, along with the significant cost of enforcement against counterfeiting, contribute to an exponential increase in the losses sustained by the U.S. economy.

Counterfeit goods also have the ability to destroy the reputation and good will associated with the marks of legitimate owners. Gradually the public begins to lose confidence and respect for reputable companies due to the appearance of counterfeits in the marketplace. More often than not, these goods are poorly constructed and are unable to perform the functions for which they were designed. They can even pose a risk to consumers' health and safety.

Mr. Chairman, in the past members of Congress have cited several instances where counterfeit goods have caused, or have had the potential to cause, loss of life and/or injury. In his statement of October 19, 1995, Congressman Goodlatte mentioned a very troubling incident involving counterfeit Louis Vuitton® handbags that were lined with heroine.

A second illustration involves metallic fasteners, which connect mechanical parts in automobiles, armored tanks, aircraft, the space shuttle, and industrial equipment such as above ground oil tanks and nuclear power plants. Counterfeit fasteners made in the United States and overseas continue to cause serious accidents involving vehicles and machinery. The "Fastener Quality Act of 1990" (P.L. 101-592) was intended to curb the production, sale, and importation of defective counterfeit fasteners by imposing civil and criminal penalties on those who dealt illegally in these materials. Manufacturers are also required under the law to register with the government a particular designation or mark for use on its product as a means to identify the company responsible for the manufacture of defective parts.

Unfortunately, regulations for the "Fastener Quality Act of 1990" have never been implemented and the potential for serious injury continues to grow. In 1992, the United States Department of Transportation (DOT) investigated 219 cases involving counterfeit fasteners, and related equipment such as brakes, wing flaps, turbine engines, and spacer seals. Defective counterfeit fasteners for example, have the potential to cause explosions and lead to the shut down of airplane engines in mid-air. One of the most serious cases investigated by the DOT involved a raid on a California based supplier of airplane parts. There, federal law enforcement officers were searching for alleged faulty counterfeit fasteners that were destined to be used in Boeing 747-400's, passenger jets that carry thousands of passengers all over the world, everyday of the year (*Aviation Week and Space Technology*, 514/92, p. 18).

A final example of the physical harm caused by counterfeit goods is the on-going investigation by the Food and Drug Administration (FDA) into the sale and distribution of counterfeit baby formula, as reported by the *New York Times* on September 6, 1995. In February, 1995 officials seized 45,000 pounds of counterfeit baby formula in the State of California. The probe has since expanded into eight states and continues to uncover potential health threats. As a result of imitation baby formula, FDA investigators believe some infants may suffer allergic reactions, or become severely malnourished. When counterfeiting affects our children, truly the most innocent of consumers, we must redouble our efforts to ensure their safety.

#### *Provisions Contained in H.R. 2511*

In order to put a stop to counterfeiting schemes, a number of the proposed amendments contained in H.R. 2511 strengthen the power of federal law enforcement. For example, the bill makes trafficking in counterfeit goods and services "predicate acts" for purposes of the Racketeer Influenced and Corrupt Organization Act (RICO). As a result, counterfeiters will pay greater fines and spend more time in jail—the greatest deterrent against future acts of counterfeiting. Counterfeiters will have less opportunity and less capital in which to start another criminal enterprise. In addi-

tion, federal law enforcement will be permitted to seize nonmonetary assets, preventing counterfeiters from continuing to practice their nefarious activities. Mr. Chairman, this provision should help put many trademark counterfeiters out of business permanently.

H.R. 2511 increases the power of federal law enforcement in another vital area. The bill clarifies that, in addition to U.S. Marshals and state and local law enforcement officers, any federal law enforcement officer (including agents from the Federal Bureau of Investigation, Secret Service, and Customs Service) may accompany civil plaintiffs in the *ex parte* seizure of counterfeit trademarked goods. This provision will allow for swifter execution of *ex parte* seizure orders issued by the court, since civil plaintiffs will have more of the federal government's resources at their disposal.

To ensure that Congress is aware of the level of effort being undertaken by federal law enforcement to thwart trademark counterfeiters around the nation, H.R. 2511 requires that the U.S. Attorney General obtain current information concerning counterfeiting cases from U.S. Attorney's offices throughout the United States. This information would include statistics such as: the number of open investigations; the number of cases referred by the United States Customs Service; the number of cases referred by other agencies; and the number and outcome of all prosecutions brought under sections 2318, 2319, and 2320 to title 18. The Attorney General would then be required to include this information in the yearly report submitted to Congress by the Department of Justice.

To help curb the introduction of imported counterfeit goods, the bill appropriately states that federal officers shall require such information on entry documentation as to allow for a determination regarding whether the imported merchandise bears a counterfeit trademark. The bill also eliminates the current provision in Customs law requiring the re-export of seized goods. Agents of the Customs Service would have the option to destroy the merchandise, thereby preventing further economic injury to U.S. companies and physical detriment to the consumer. Both provisions recognize that the ills of counterfeiting extend far beyond the borders of the United States.

In trademark counterfeiting cases, as in all other cases, the plaintiff has the burden of proving damages. Most often, the defendant is difficult to locate and has retained few, if any, business records. As a result, proof of damages is difficult, if not impossible. These so-called "fly-by-night" operations are mobile, with no permanent base, and utilize cheap equipment to make their products. Counterfeiters continue their enterprise because it is relatively inexpensive for them to do so, and very lucrative given their lack of overhead and marketing expenses, and in most cases, non-payment of taxes.

While the counterfeiters get richer and richer, U.S. companies are losing billions of dollars as a result of counterfeiting. To help businesses recover their losses, a section of H.R. 2511 states that trademark owners could opt for an award of statutory damages of up to \$1,000,000 per mark. Another section of the bill provides for the imposition of additional civil penalties on persons implicated in counterfeiting. Not only do these increased civil penalties and statutory damages help trademark owners recover from financial damage, but they also help to put a dent in the pocketbooks of counterfeiters who may contemplate setting up shop again in the future.

Each one of these provisions, Mr. Chairman, demonstrates the willingness of Congress to take counterfeiting seriously and to direct more resources to fighting this chronic problem.

#### *Amend the "Tariff Act of 1930"*

The provisions contained in the House version of the "Anticounterfeiting Consumer Protection Act of 1995" and those of the Senate's version (S. 1136) attempt to achieve the same goals. However, there are particular sections of H.R. 2511 which inappropriately seek to amend the "Lanham Act." They are Section 6, the "Disposition of Merchandise Bearing Counterfeit American Trademark and Civil Penalties"; and Section 9, "Record keeping Requirements." INTA believes that the provisions in these sections are more analogous to the "Tariff Act of 1930," as recognized in the Senate's version.

As you know, Mr. Chairman, INTA does not support attempts to use the "Lanham Act" to accomplish non-trademark functions. INTA has consistently, throughout the "Lanham Act's" history, worked to keep the statute a purely trademark and related unfair competition law.

The "Tariff Act of 1930" was designed to account for the seizure, forfeiture, and disposition of merchandise bearing a counterfeit mark; as well as for reports concerning manifests and the unloading of vessels and vehicles (see 19 U.S.C.A 1431, 1484, 1526). Clearly, the provisions contained in Section 6 and Section 9 (the disposition of counterfeit merchandise, additional civil penalties for the importation of

counterfeit goods, requirements for information on entry documentation to determine whether goods are counterfeit, and the disclosure of aircraft manifests) are more appropriate to the "Tariff act of 1930". They do not address no registration as intended by the "Lanham Act." Instead, these provisions refer to tie procedures involved in monitoring illegal trade activities within the United States, in the nation's airports, and on our loading docks.

The seizure of vehicles also does not pertain to the registration of trademarks. Therefore, in addition to amending the "Tariff act of 1930," INTA believes that the provision referring to the seizure of vehicles used by counterfeiters (see H.R. 2511, Section 5) would be a more suitable amendment to 49 U.S.C.A., App. § 781, as identified in S. 1136.

#### CONCLUSION

INTA believes that the "Anticounterfeiting Consumer Protection Act of 1995" is consistent with Congress' efforts to stamp out crime in whatever form it assumes. This legislation not only addresses the physical well-being of our citizens, but the health of our economy.

INTA urges the Subcommittee to report out the bill as promptly as possible. The Association looks forward to continuing to work with the members of the panel and its staff in assuring passage of the measure.

Mr. MOORHEAD. Ms. Small.

#### STATEMENT OF ANGELA SMALL, VICE PRESIDENT, LEGAL AFFAIRS, SABAN ENTERTAINMENT, INC.

Ms. SMALL. Good morning, Chairman Moorhead, Congressman Goodlatte, and members of the panel.

I am vice president of Legal Affairs of Saban Entertainment, which is a Los Angeles-based entertainment co. We are best known for the hit children's television show Mighty Morphin Power Rangers. In addition to my duties at Saban, I am also an adjunct professor of trademark law at Pepperdine Law School in Malibu, CA. I also serve on the board of directors of the International Anticounterfeiting Coalition.

As counsel for Saban, I have had the dubious honor of managing the anticounterfeiting program of one of the singularly most counterfeited properties in America in 1994, the Mighty Morphin Power Rangers. The Power Rangers originally aired in August of 1993 and became an instant phenomenon. It has been the number-one rated children's television show for over 100 weeks.

When I began my position as in-house counsel at Saban in March 1994, the American marketplace was flooded with counterfeit Mighty Morphin Power Rangers toys, T-shirts, stickers, posters, and other merchandise. I literally received reports of infringements on a virtually daily basis for most of 1994.

I immediately set out to set up civil ex-parte seizure actions in cooperation with Warner Bros. and other companies in several of the major markets. I personally have attended civil seizures against over 100 defendants, primarily in Los Angeles, New York City, and the Miami area. The cost of these actions to Saban has been in excess of \$4 million in the last 18 months.

I have also participated in criminal actions against counterfeiters, although my experience in this area is far more limited given the restraints on availability of law enforcement officials for anticounterfeiting actions. Saban estimates that it has seized some \$10 million worth of counterfeit and infringing items in the last 18 months. In addition, I have had numerous shipments of merchandise detained by various U.S. Customs' houses.

In my crash course in dealing with the Mighty Morphin Power Ranger counterfeiting problem, several things have become crystal clear to me. The first thing that is obvious is that the current laws are insufficient to act as a deterrent to people in the counterfeiting business.

Counterfeiters are thieves, just the same as someone who robs a bank. They are taking something of great value which does not belong to them. People often ask, who does this crime of counterfeiting hurt? And the answer is that it hurts us all.

Obviously, I am here today because counterfeiting hurts Saban Entertainment. We lose royalties on licensed merchandise which is not purchased because a counterfeit item is purchased in its stead. But counterfeits also hurt our licensees who compete fairly by paying a license fee and by paying business tax and income tax on all the merchandise they sell. It also hurts the public which does not benefit from the income tax and sales tax the counterfeiters invariably do not pay. But most importantly, counterfeit merchandise presents a serious threat to the health and safety of the American public. Counterfeit toys and T-shirts are invariably made of the cheapest possible materials, which are often dangerous.

The counterfeiter's sole goal is to maximize profit. Counterfeit silk screen T-shirts have been found to be made with naphtha, the flammable ingredient contained in lighter fluid. Counterfeit toys are made of the cheapest plastics which break easily when children play with them exposing sharp edges. Also, small pieces easily break off, posing choking hazards. Toxic paints have been found to be used on counterfeit toys.

I have had toys where the head breaks off and the packaging says "Mighty Morphin Power Rangers." The toys look very similar. I had one toy where it was actually still in the package and the head was loose and it was the size of a 1-inch round circle that could easily get lodged in a child's throat. Things like this are a nightmare to Saban.

I also had an investigator send me a bag full of 3-inch power Rangers novelty figures that were soft plastic. And when I open the bag, they smelled like gasoline. I don't know what they were made of but they were not made of any substance that any licensed toy would be made from.

I have some sample toys and T-shirt articles with me that demonstrate the typically inferior quality of counterfeit items. This is a legitimate licensed Mighty Morphin Power Ranger. This is the Yellow Ranger. This, in my left hand, is an unauthorized copy. It says Mighty Morphin Power Rangers. It has the same logos on it. The toy is identical. There is a container of this counterfeit product currently being held by Customs in Houston. Under the current law, I am unable to find out the identity of the importer, the origin of the shipment. I am at a total disadvantage. Even a careful consumer looking at this would be likely to think that this is a licensed product. It is not.

We at Saban live in fear that a child will be harmed by a counterfeit toy or other item. A single incident could likely produce inaccurate news coverage attributing the merchandise to Saban. Such damage to Saban's goodwill is virtually impossible to correct. The media is highly unlikely to prominently cover the fact that it

mistakenly attributed to Saban an injury that was actually due to a knockoff product.

I would like to share some specific examples of problems that I have encountered which I believe the current legislation will help correct.

Under the current law, U.S. marshals are required to assist in all civil ex-parte seizure actions. Because of limited staffs and competing demands for their services, it is typical that four to six marshals participate in an action. Typically, 10 to 20 defendants are named in a single action. For safety reasons, marshals always act in pairs. Thus, for example, with four marshals only two locations may be served with seizure papers at one time.

The counterfeiting community is highly organized. The result is that the other named defendants get telephone calls, are paged, or a member of one of the served defendants will actually run out of the store and run down the street alerting other merchants that a seizure is in process. Counterfeit merchandise is then secreted away for sale at a later time.

I have seen merchants literally run down the streets with arms full of merchandise going to their storage areas, going to their cars just getting out of the area. You can hear people screaming, they are looking for Power Rangers, they are looking for Looney Tunes, they are looking for Disney. And they grab the identified merchandise and run down the street with it. They will leave their counterfeit no fear, Chanel, or whatever they know that we are not currently seizing. There are generally districts in Los Angeles and New York and Florida where there is a counterfeit clothing district or a counterfeit toy district. The counterfeiters all work together and communicate when these seizures are going on.

In contrast, on one unusual occasion in Los Angeles, the Marshals Service provided the trademark holders with 36 marshals. Eighteen locations in the wholesale toy district were served simultaneously. The total number of toys seized in this action was 65,000. A typical seizure nets approximately between 1,000 and 10,000 items of counterfeit merchandise, and I am speaking of actions where we have a relatively similar numbers of defendants. The point of this is that counterfeiters cooperatively play a game of hide and seek and they usually win. Increased availability of Federal officers will greatly increase the effectiveness of our civil ex-parte seizures.

I also participated in a criminal seizure at a clothing manufacturer in Florida which was conducted by the Broward County Police Department in August 1994. Unfortunately, my experience was typical of criminal anticounterfeiting cases. Saban and the other participants paid private investigators to obtain sufficient information for the police to issue an arrest warrant. Counterfeit clothing estimated to be worth well in excess of \$1 million was seized. There was so much clothing that it took a dozen people over 10 hours to box and tag it and remove it from the location.

The owner was an Israeli national who is present in the United States on a tourist visa which had expired some 4 years prior to the seizure. Some of his workers were undocumented aliens. The defendant was released on bail. He was tried on eight misdemeanor counts 1 year later, August 1995. He was convicted of six of the

eight counts. He was again released on bail. There is currently no date set for his sentencing.

My private investigator has information that this defendant is back in the counterfeiting business. I understand that he lives in a four-bedroom house and that both he and his wife drive Lexus sedans. This gentleman literally laughed in my face at the seizure when he was arrested and at the trial when we were in the halls during the process of the trial. He is laughing all the way to the bank.

In another criminal matter handled by the New York Police Department and the FBI, a seizure was conducted at a New York City clothing manufacturer. Again, our private investigators worked with law enforcement to obtain evidence sufficient to conduct a criminal seizure. The whereabouts and activities of this entity was known for over 6 months. However, due to the size of the operation and some evidence that the organization was affiliated with organized crime, the trademark owners decided not to conduct a civil seizure.

While we all work very hard for our companies, none of us choose to die in the line of business. The primary business of this organization was embroidery. There were 20 to 25 computerized sewing machines and each sewing machine had six heads. Each head produced an embroidered design. They were driven by computer chips. This organization took a picture of a licensed logo, had a computer program that would transfer that to a computer chip for the sewing machine, and each head on this sewing machine pumped out an embroidered design that looked just like the licensed design in less than a minute.

This factory ran for 24 hours a day. It manufactured millions of dollars of merchandise a month. Charges are currently pending against the defendants. There is some evidence that some of the money from this operation went to fund the defense of the World Trade Center bombers.

There are currently not sufficient deterrents to stop individuals who thwart the law and engage in large-scale counterfeiting. They make too much money to be deterred by a day or two in jail or the seizure of a few hundred or even a few thousand pieces of merchandise. Seizures are considered a cost of doing business to them.

I support the increased penalty provisions of this legislation because I believe they will help deter counterfeiting activities. I specifically support the legislation section which eliminates current provisions which allow U.S. Customs to reexport counterfeit merchandise. The result of the current provision is that a counterfeit goods importer will simply find a different port, either in the United States or in some other country, in which the counterfeit goods are allowed entrance without detection.

The provisions requiring importers to file more complete documentation are also a major improvement over the existing law. Currently, the documents which Customs get identify the type of product by a number and they do not provide any information whatsoever as to the trademark on the goods. I think Customs is at a major disadvantage in attempting to identify counterfeit merchandise and anything that we can do to help them will be of benefit.

I also specifically support the provision which enhances the financial penalties for an importer of counterfeit goods.

And finally I believe that one of the most important aspects of this legislation is the creation of statutory damages much like the provisions of the Copyright Act. Counterfeiters do not keep evidence of their illegal transactions. Trademark holders currently need to prove actual damages in civil litigation and are unable to do so because there are no records of sales of the individual defendants. I believe the availability of statutory damages will act as a deterrent against engaging in this illegal activity.

Given the current state of the law, counterfeiting is a crime of choice. It is the crime of the 1990's. Individuals can make hundreds of thousands of dollars, if not millions, with little threat of punishment or restitution. For many, there is no reason not to violate the intellectual property laws of the United States.

I believe that H.R. 2511 provides a needed deterrent against counterfeiting. I believe it should be passed for the well-being of the American public as well as to protect the rights of the trademark owners in the United States.

I am honored to have been invited here today and will of course answer any questions you have.

Mr. MOORHEAD. Thank you.

[The prepared statement of Ms. Small follows:]

PREPARED STATEMENT OF ANGELA SMALL, VICE PRESIDENT, LEGAL AFFAIRS, SABAN ENTERTAINMENT, INC.

#### I. BACKGROUND INTRODUCTION

I, Angela Small, am an attorney, admitted to practice in California since 1987. For the last two years, I have been Vice President of Legal Affairs of Saban Entertainment, Inc., the owners of Mighty Morphin Power Rangers. Both the registration and enforcement of Saban's trademarks and copyrights have been my exclusive responsibility. I have overseen civil actions and criminal enforcement against hundreds of infringers in the United States over the last year. I am currently focusing on Saban's international enforcement programs. Prior to working at Saban, I was in private practice, specializing in intellectual property matters. Immediately prior to coming in-house at Saban, I worked for two and a half years at Bleaker & Collins in Los Angeles where I handled trademark and copyright litigation. I have also held positions at Paramount Pictures Corp., The United States Patent and Trademark Office and Graham & James.

Saban Entertainment, Inc., is a broad-based entertainment company specializing in the creation, production, acquisition and distribution of all forms of television programming, feature films, music and consumer products for the worldwide entertainment marketplace. The company, wholly owned by Chairman and Chief Executive Officer Haim Saban, has become the largest independent supplier of children's programming in the world and one of the most prolific producers of movies and long forms. Saban Entertainment provides programming for network, first-run syndication and cable television, in addition to feature films, home video and music for domestic and international television.

#### A. Saban's Anticounterfeiting Program

During the past two years, Saban's Power Rangers action figures have been the number one selling toy in America. In addition to action figures, Saban has licensed a variety of other Power Rangers merchandise including apparel, costumes, and novelty items, all of which have been enormously popular. While Saban and its licensees and retailers around the United States enjoyed the enormous success of the Power Rangers, the lessor publicized problem of the counterfeiting of Saban's trademarks and copyrights was becoming acute.

During 1994 and 1995, Saban waged an aggressive and expensive anticounterfeiting campaign throughout the nation to eliminate counterfeit products from the marketplace. Saban's anticounterfeiting efforts include the filing of numerous civil seizure actions under Title 15 U.S.C. 1116, cooperating in criminal inves-

tigations and prosecutions of counterfeiters under state and federal criminal statutes in cooperation with local law enforcement and the FBI, and close cooperation with the U.S. Customs Service to end the importation of counterfeit merchandise into the United States.

*B. Counterfeit Products Are Harmful To Legitimate Businesses, The Economy, And The Public, Particularly Children*

Counterfeiting Saban's licensed products presents great danger to children, as counterfeit toys are unsafe for several reasons. First, counterfeit toys and related products are not tested for safety as is the industry practice. I have seen counterfeit action figures whose plastic parts can be easily pulled apart, exposing children to small pieces on which they can easily choke. Poorly made counterfeit toys are prone to becoming dangerous when dropped or thrown in the normal course of children's play, exposing children to jagged or sharp plastic edges.

Second, the paints and chemicals on counterfeit toys are also potentially toxic. Chemicals used in silk-screening counterfeit garments, such as t-shirts, may also be toxic or flammable.

Third, labelling on licensed children's products provides adults with significant safety information, including, the age and use recommendations, treatment in the event of misuse, and the names of the manufacturer and trademark holder. Counterfeit products such as toys seldom contain adequate labelling. The lack of proper labelling on counterfeit products creates a hazard for children because adults are not provided with sufficient safety information. Even a toy which might be safe in the hands of a ten year old could be dangerous to a toddler. For this reason, licensed products have clear warning labels. The failure on counterfeit toys to provide this pertinent information creates an even greater risk to children.

Furthermore, while licensed manufacturers proudly label their products (Saban's licensed goods have Saban's name and trademark or copyright notice and often include a toll free number for consumer questions), counterfeiters leave little trace of their identities to connect them to liability exposure and criminal and civil anticounterfeiting laws. When a consumer purchases a counterfeit toy or t-shirt, which turns out to be defective, there is no manufacturer identified for the customer to return the merchandise. Sometimes, consumers mistakenly associate Saban with these defective and harmful counterfeit products, which not surprisingly, damages Saban's goodwill and reputation.

Saban has spent millions of dollars in the development of quality products and in advertising, resulting in significant fame and public goodwill. By contrast, counterfeiters can easily produce knock-off Mighty Morphin Power Rangers t-shirts which sell for \$10-20 with only a \$2 investment. They then reap the benefit of Saban's cost of the production of the television series and extensive advertising. Moreover, the ubiquity of unrecorded transactions continues to damage the economy as counterfeiters do not pay income tax or sales tax on these unauthorized transactions.

Counterfeiting reduces the royalties Saban receives from the sale of licensed products, damages Saban's reputation and that of its licensees, sabotages the economy as a whole and, more importantly, endangers the consuming public. The protection of the public, especially children, from harmful counterfeit products, creates an overwhelming need to implement The Anticounterfeiting Consumer Protection Act of 1995.

II. PROPOSED CHANGES ENCOMPASSED BY THE ANICOUNTERFEITING CONSUMER PROTECTION ACT OF 1995

I support the Act as it has been proposed. As set forth below, I believe the Act provides significant modifications of existing law which will facilitate trademark holders' and law enforcement agencies' anticounterfeiting efforts.

*A. Civil Remedies*

The increased unavailability of law enforcement officials to assist in execution of criminal anticounterfeiting laws, compels Saban to rely heavily on the availability of civil remedies to tackle the severe counterfeiting problem. The ability to petition courts ex parte for a civil seizure order in counterfeiting cases and the availability of civil damages are important deterrents in combating counterfeiting.

In a well-orchestrated civil seizure in which 36 U.S. Marshal's simultaneously descended on 21 wholesalers, more than 65,000 counterfeit toys were seized. Recently, we confiscated more than one million milk cap novelty items from one Los Angeles area counterfeiter. These counterfeiters are not typically mom-and-pop operations. They are often sophisticated businesses, with production lines, often using undocumented alien labor.

Although current legislation provides trademark owners with civil remedies, obtaining the relief available is sometimes difficult. The proposed amendments would greatly facilitate implementation of and increase the civil remedies afforded to intellectual property owners.

*1. Section 5—Amendment To Title 15 U.S.C. Section 1116(d)(9)—Explicitly Authorizing All Federal Officers To Assist With Ex Parte Seizures*

The Act contains some key provisions to facilitate the civil action process. By authorizing all federal law enforcement officers, and State and local law enforcement officers to execute ex parte seizure orders, the Act will make our efforts more effective and shore up weaknesses of the existing law. Under existing law, judicial relief in many counterfeiting cases has become dependent on the availability of the Marshal's Service to execute civil seizure and impoundment orders. The delay which occurs when the Marshal's service is occupied with other pressing matters, for example when the heads-of-state from around the world arrived at the United Nations and the Marshals had overwhelming security issues to deal with, can be fatal to obtaining any meaningful remedy. In the example I just mentioned, when the seizure was finally undertaken, very few items, less than hundred, were seized.

This provision should enable trademark holders to obtain the assistance of a federal officer without delay thereby greatly reducing the risk that the counterfeit goods will be hidden or distributed before a seizure can be executed. Moreover, such seizures often involve multiple defendants at multiple locations, increasing the need for additional law enforcement assistance.

*2. Section 5—Amendment To Title 15 U.S.C. Section 1116(d)(9)—Permitting Seizure Of Vehicles Used To Transport Counterfeit Merchandise*

Currently, there is very little which can be done to deter counterfeiters. The amount of property seized is often considered merely a cost of doing business. Further deterrence will be achieved by permitting seizure of vehicles used to transport counterfeit merchandise.

*3. Section 7—Amendment To Title 15 U.S.C. Section 1117—Authorizing Statutory Damages As Alternative Civil Remedy*

I also support the amendment of Title 15 U.S.C. Section 1117 to allow the imposition of statutory damages as an alternative remedy to actual damages civil cases. Counterfeiters are appropriate subjects for the imposition of statutory damages, because they typically take active steps to thwart the calculation of damages. Counterfeiters routinely do not keep records. They deal in cash. They hide, not just their merchandise, but their profits and accounting methods from authorities and trademark holders. Even where a trademark owner seizes large quantities of goods, it is usually impossible to prove damages because of this lack of documentation. Saban generally spends \$10 for every one dollar it receives as a result of litigation with counterfeiters.

The new law prescribes not less than \$500 or more than \$10,000 per counterfeit mark or not more than \$1,000,000 per mark where the offense is found to be willful. This provision is similar to that provided and successfully implemented under copyright law.

*B. Changes in Customs Service Laws With Respect to Importation of Counterfeit Merchandise*

Saban has encountered a tremendous problem with the importation of unauthorized counterfeit toys and other products. Despite the overwhelming difficulty of the task, Customs and other Federal officials have discovered numerous shipments of counterfeit products. The Act provides for several amendments which would increase the remedies available to trademark holders when counterfeit merchandise is imported.

*1. Section 8—Amendment To Title 17 U.S.C. Section 603(c)—Prohibiting Customs' Re-Exportation Of Piratical Merchandise*

It is currently Customs' policy to allow counterfeit products to be re-exported. The result of such re-export is that the goods may enter the U.S. at another port, or may be sent outside the United States for sale.

The need for this provision is clear to me because of the patterns of trade in counterfeit goods. Just last month I was informed by U.S. Customs that a particularly pernicious counterfeit toy, one that is so identical in appearance to the authorized product that only an expert could likely catch the differences, was detained at a Texas customs port of entry. Since that time, I have been informed that these same products are showing up in South America.

*2. Section 6—Amendment To Title 15 U.S.C. Section 1114—Requiring Seizure And Destruction Of Counterfeit Merchandise Unless Trademark Owner Consents To Other Disposition*

This provision provides that once counterfeit merchandise is identified by the appropriate Federal official, it may be seized and destroyed or with the consent of the owner, donated to charity or sold, rather than merely re-exported. In fact, in an ever-more connected international market place, a dangerous counterfeit in a foreign country could easily make news around the world harming Saban's reputation and the sale of licensed products in the United States.

*3. Section 6—Amendment To Title 15 U.S.C. Section 1114—Authorizing Imposition Of Fine On Importer Of Counterfeit Merchandise Equal To The Value Of Genuine Product*

Counterfeiters routinely try to import counterfeit products. Their only risk is the potential loss of the product if caught and only then if it is not re-exported. Typically, importers of counterfeit merchandise simply view loss of some of their cargo as the cost of conducting business. Under the new proposed provision the penalty of the market value of the merchandise creates a more substantial disincentive to importing counterfeit goods.

*4. Section 9—Amendment To Title 15 U.S.C. Section 1124—Disclosure Of Aircraft And Vessel Manifests*

It is an important tool to fighting counterfeiting to be able to obtain information about a particular cargo. Without the information, Saban cannot take action against the importer of counterfeit merchandise. Customs does not disclose information found in aircraft manifests. Under the Act, trademark owners could have access not only to information provided in vessel manifests, but also to aircraft manifests, which is important because small and lightweight counterfeit merchandise is often shipped by air.

*5. Section 9—Amendment To Title 15 U.S.C. Section 1124—Requiring Documentation of Imported Goods Bearing Trademarks*

The provision requiring importers to document and disclose information necessary to determine whether the imported merchandise bears an infringing trademark would facilitate the identification of infringing goods by Customs officials. This information could also be provided in a form which could be easily electronically scanned and could be compiled with little burden on Federal officials.

*C. Criminal Law Amendments*

Criminal prosecution of counterfeiters is fundamental to the protection of the public from deceptive and dangerous merchandise. Saban actively assists law enforcement efforts to bring counterfeiters within the purview of the criminal justice system. Sometimes, however, the process can be frustrating. One Florida manufacturer had hundreds of rolls of counterfeit fabric and tens of thousands of garments seized in a criminal seizure from his 20,000 foot warehouse where he produced millions of dollars worth of counterfeit clothing. The defendant was convicted of counterfeiting under a Florida statute; however, a year and a half later, he has yet to be sentenced. The Act provides for some essential amendments to criminal laws which promote federal criminal prosecutions and convictions of counterfeiting activity.

*1. Section 2—Amendment of Title 18 U.S.C. Section 1961(1)(B)—Inclusion Of Trafficking In Counterfeit Goods As A "Predicate Act" Under The Criminal RICO Statute*

More and more, counterfeiting involves sophisticated and dangerous organized crime groups because counterfeiting is a high profit, low risk venture for these opportunistic criminals. The increase of large organized crime counterfeiting rings endangers all Americans as criminals substitute lucrative products such as unauthorized food products, pharmaceuticals, computer software, and machine parts for legitimate products. This amendment would subject criminal counterfeiters to the broader penalties available under RICO, which would certainly facilitate criminal prosecution and deter counterfeiting activity.

*Section 4—Amendment To Title 18 U.S.C. Section 2320—Requiring Report On Trafficking In Counterfeit Merchandise*

The gathering and reporting of information relating to criminal counterfeiting actions by all the United States Attorney's Offices will allow the public to evaluate the extent of commercial counterfeiting activity. The reporting requirement will also help focus Federal law enforcement on the severity of the counterfeiting problem and the necessity for the vigorous prosecution of its perpetrators. This information

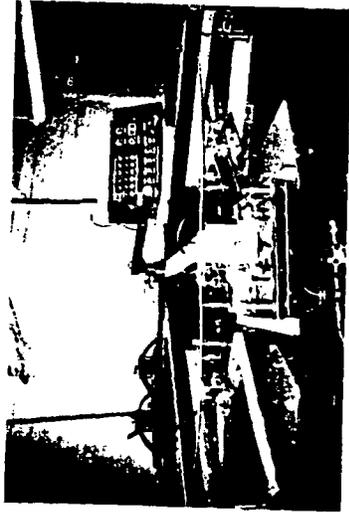
will also be useful to legislators in directing law enforcement resources for combating the social and economic epidemic of counterfeiting.

III. CONCLUSION

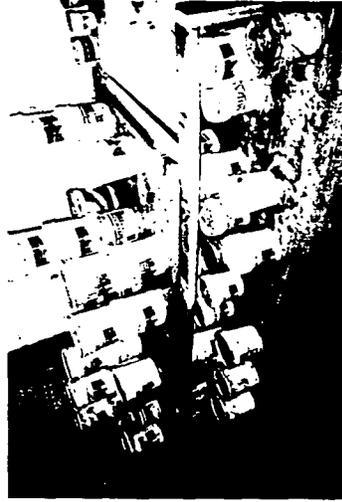
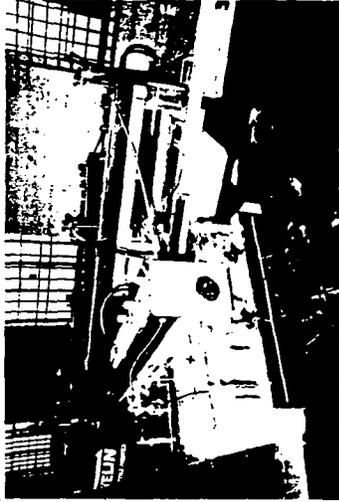
The Act, as proposed, will result in increased enforcement, lead to the prosecution of counterfeiters and create a strong deterrent to the counterfeiting community through increased penalties and additional remedies. The Act sends a clear message that the counterfeiting of goods and services will not be tolerated.



NEW YORK SEIZURE



LOS ANGELES SEIZURE -- APPAREL



LOS ANGELES SEIZURE -- APPAREL



LOS ANGELES SEIZURE -- APPAREL



LOS ANGELES SEIZURE -- TOYS



LOS ANGELES SEIZURE -- TOYS

Mr. MOORHEAD. Mr. Bliss.

**STATEMENT OF JOHN S. BLISS, PRESIDENT, INTERNATIONAL  
ANTICOUNTERFEITING COALITION**

Mr. BLISS. Good morning, Mr. Chairman, Mr. Goodlatte. I should almost say good afternoon.

My name is John Bliss and I am the president of the International Anticounterfeiting Coalition. The IACC has a single-minded purpose and that is eliminating the worldwide sale of U.S. fake goods. The IACC's 160-plus members strongly endorse H.R. 2511. We urge the subcommittee to act on this legislation as quickly as possible in order to protect the safety of American consumers who are threatened by the counterfeit products available today.

Mr. Chairman, as we have heard today, there is this persistent myth that counterfeiting is best represented by a shady figure selling watches out of his overcoat on a street corner. I think the myth continues that the consumer knows what he is buying and thinks that no harm is being done. What most Americans do not realize and what is becoming more apparent after the testimony today is that counterfeiting is an international multibillion-dollar business. It is dominated by organized crime, or a crime which is organized, as Ms. Simmons-Gill said, and which uses the easy money from this counterfeiting activity to finance other criminal activity, literally from money laundering to murder.

Counterfeiting ruins businesses. It steals hundreds of thousands of jobs. It cheats millions of consumers, and worse, it threatens the health and safety of our consumers. It has, as we all know, grown very rapidly in recent years, in large part due to the little risk of being arrested and prosecuted and virtually no risk of being incarcerated.

Penalties are an insignificant cost of doing business. Lured by high profits and low risk, you have notorious gangs, such as Born to Kill out of New York, notoriously violent gangs, starting to get into counterfeiting. We have spoken about David Thai who is the leader of this gang. He has said recently that he made up to \$13 million a year selling Rolex and Cartier watches.

Prior to the hearing, Chairman Moorhead and I were discussing the prevalent view that why should we care about the sale of Rolex and Cartier watches. Everyone knows that they are really for sale for \$2,400 or so dollars and they are buying it at \$25 or \$30.

Well, the reason is that the revenues derived from the sale of seemingly benign counterfeits like Rolex and Cartier are used to fund illicit criminal activity. In David Thai's instance, he was using the revenues from counterfeit Rolex and Cartier watches to run a prostitution ring. His sales pitch was very direct and chillingly effective. He would approach people and say, "buy my watches or I will kill you." And in fact David Thai is now serving three consecutive life sentences in Allenwood Penitentiary, of all places, for murder, robbery, and extortion. And he has committed murders in connection with territorial disputes and wholesalers' unwillingness to engage in his own operation.

Now the profits, as I said, from counterfeiting fund other high-profile criminal activities, but with David Thai it was prostitution.

In recent raids in L.A., law enforcement officials seized counterfeit software and other materials with the potential retail value in excess of \$10.5 million. But they also found evidence of a gunrunning operation. They had 4 pounds of plastic explosives seized, 2 pounds of TNT, shotguns, handguns, and silencers. Together with all of that, I know there was some concern expressed earlier by the administration about the propriety of extending the criminal law in the area of trafficking and labels.

Well, in this raid, there were purchase orders for \$200 million worth of holograms. And I think the evidence is very clear that trafficking in labels is part and parcel of a larger counterfeiting operation. To strengthen the penalties as to the finished product but to permit the loophole to exist, to continue and to traffic in the component parts doesn't seem to make a lot of sense to me.

Statistics from American industries that have been hit by counterfeiting are really truly shocking. I know Congressman Conyers alluded to the fact that in the automobile industry \$12 billion has been lost due to auto parts counterfeiting. I think he suggested that an additional 200 some odd thousand workers could be hired if the auto parts counterfeiting business were eradicated.

In the software industry, similar huge losses, \$12.8 billion in 1993. Some say that that is greater than their entire profits that year in the software industry.

Even more distressing than the economic costs associated with counterfeiting is the threat that this crime poses to the health and the safety of American consumers. A helicopter with counterfeit parts crashed, killing a reporter during a live broadcast in 1987. Later Federal investigators, upon further investigation, learned that there were 600 helicopters sold both to NATO and to private entities that contained counterfeit parts.

The Department of Transportation has reported numerous cases of counterfeit airplane parts. Recently a California parts firm pled guilty to selling unapproved counterfeit combustion liners. These are critical components in jet engines that confine the heat of the engine to a particular region of the engine.

You have previously, Congressman Goodlatte, spoken about the counterfeit Head and Shoulders. They, Procter & Gamble, were forced to take the incredible but appropriate step of issuing that national advertising—an advertisement warning consumers that the counterfeit Head and Shoulders posed a risk to those with immune problems.

We had counterfeit intraaortic pumps which are used in heart surgery that have contained counterfeit components. Counterfeit sunglasses. Again, a product that seems benign at first glance, but are not shatterproof, aren't even impact resistant, and certainly don't carry the UV protections as advertised on the counterfeit labels.

Counterfeit bolts and fasteners, as Ms. Simmons-Gill alluded to earlier, have caused bridge joints to fail, and military equipment to break down. Nuclear facilities have been found in a recent GAO report to contain counterfeit fasteners in the area that is responsible for ensuring against nuclear meltdowns.

Regrettably, these counterfeits attack our children and we have previously spoken about the counterfeit infant formula that was

found in 16 States and was potentially harmful to children who were allergic to the particular ingredients used in those products.

Ms. Small has spoken about the counterfeit toys and the risk they pose to children for choking the sharp edges, the toxic paints. These examples are literally just a few in what are an endless stream of incidents where counterfeits have placed the health and safety of Americans in jeopardy.

If we have time permitting at the end, I have yet another set of counterfeits, along with Congressman Goodlatte's and Ms. Small's, that I can show you that tell this story more vividly.

11 years ago, when counterfeiting was far less sophisticated than it is now, we started to tackle this problem with the passage of the 1984 Trademark Counterfeiting Act, but frankly that legislation is now fairly inadequate to deal with the sophisticated criminals that we are now dealing with. H.R. 2511 would most definitely provide Federal law enforcement officers with a more sophisticated arsenal of weapons to match the sophistication of the organized criminals that are now engaged in this activity.

While the basis of our IACC support of each provision in H.R. 2511 has been detailed in our written testimony, I just wanted to focus for a moment on one very important provision and that is that the crime of trafficking in counterfeit goods or services is made a predicate act in your bill. I was pleased to hear the administration, both PTO and Customs, signal their support for that. It is, in our discussions with assistant U.S. attorneys around the country, the pivotal piece of missing weaponry that they need to more aggressively pursue counterfeiters.

Current RICO laws, as you know, have no predicate offense that involve counterfeiting and this prevents the Federal officials from taking actions against counterfeit organized crime syndicates, the organizations as opposed to the specific events. Best evidence of the need for this is the Microsoft raid I alluded to in L.A. Here you have L.A. County sheriffs bringing to the table wrapped in a bow 10.5 million dollars' worth of seized counterfeit holograms, manuals, Certificates of Authenticity, documented ties to three organized crime syndicates, including three Chinese triads. But the U.S. attorney declined to take the case, in part on the grounds that it failed to contain—the current criminal RICO law failed to contain a predicate offense for counterfeiting. So your legislation would immediately address a problem which may have resulted in stronger action out in the L.A. U.S. Attorney's Office.

It seems to me that racketeering laws ought to apply to all racketeering activities and counterfeits are simply the most recent product line, if you will, engaged in by racketeers. It seems particularly appropriate to apply current RICO laws to goods such as counterfeits where they present health and safety risks.

Mr. Chairman, since the 1984 act was passed, the loss to legitimate businesses has skyrocketed from \$5.5 billion in 1982 to \$200 billion now, a 3,000 percent increase. Any other industry which would experience this kind of growth would most likely make the covers of every business magazine in the country, but obviously the faces of the men who run the counterfeiting operations are more likely to be seen on FBI's Most Wanted List.

I thank you very much for this opportunity to testify and I also will be pleased to answer any questions.

Mr. MOORHEAD. Well, thank you.

[The prepared statement of Mr. Bliss follows:]

PREPARED STATEMENT OF JOHN S. BLISS, PRESIDENT, INTERNATIONAL  
ANTICOUNTERFEITING COALITION

Good morning and thank you for this opportunity to testify. My name is John Bliss and I am the President of the International Anticounterfeiting Coalition. The IACC is a non-profit trade association comprised of more than 160 members, including corporations, business trade associations, and professional firms. IACC members come from a wide range of important industries: auto, apparel, luxury goods, pharmaceuticals, computer software, food, and entertainment, among others. The Coalition's purpose is to work with governments around the world to improve the protection of intellectual property rights and the safety of consumers from the threats posed by counterfeiting.

The IACC strongly endorses H.R. 2511, the Anticounterfeiting Consumer Protection Act of 1995, and we urge the Subcommittee to act on this important legislation as quickly as possible.

Today, there is a persistent myth about counterfeiting. To most Americans, counterfeiting is best represented by a shady figure selling fake watches out of his overcoat on a city street corner. The consumer knows he isn't buying the real item. The entire process is considered a joke, and no harm is done. No one is hurt, and you basically get what you pay for.

In fact, there is a cost to counterfeiting—almost \$200 billion in lost revenue each year. What most Americans do not realize is that counterfeiting is an international, multibillion-dollar crime. It is dominated by organized crime, which uses the easy money from counterfeiting to finance other criminal activity, from money laundering to murder. Counterfeiting ruins businesses, steals hundreds of thousands of jobs, and cheats millions of consumers. In fact, many consumers are not even aware they are buying counterfeit products. Counterfeiters have tried to sell almost every type of consumer product, from watches to airplane and auto parts, from videos to pharmaceuticals.

The rapid growth in counterfeiting is directly related to the unlikelihood of prosecution. Counterfeiters have little chance of being arrested and prosecuted under current law, and even if their activities are discovered, the penalties are insignificant. The lure of easy money has drawn organized crime syndicates into the act. For example, David Thai, the former head of the New York City Born to Kill gang, recently stated that he made an estimated \$13 million a year selling counterfeit Rolex and Cartier watches. In August of 1994, authorities raided 17 video stores in the greater Detroit area and seized more than 20,000 illegal videocassettes. All the stores were supplied by an organized distribution network that relied on one large illegal duplicating facility for inventory.

Counterfeiters can ship a low-quality quartz watch that resembles a high-priced designer watch from Hong Kong to the United States for as little as \$3. A counterfeit trade name and logo can be attached to the watch for fifty cents. The end product sells on the street for at least \$30, ten times its original cost.

The pharmaceutical industry provides another example. It can take ten years and \$125 to \$160 million to bring a pharmaceutical product to market. A counterfeit drug can be easily copied by a chemist in days with a few thousand dollars of equipment, especially since safety and efficacy are of no concern.

Counterfeit activities also damage legitimate businesses through the injury to reputation that develops when lower quality counterfeit goods are associated with their trademark and company name. In addition, employees of companies whose products are counterfeited feel the negative effects of this crime. As sales of counterfeit products increase, sales of legitimate products decrease, which makes it more difficult for companies to recoup their investments. If companies are not selling as many products as they should, then they no longer need as many employees to continue to manufacture the products. According to the U.S. Customs Service, counterfeiting resulted in the loss of up to 750,000 jobs in 1993.

The profits made from counterfeiting often funds other high profile criminal activities. Chinese organized crime syndicates, commonly known as Triads, are increasingly turning to counterfeiting as a source of funds and to launder drug money. In three recent raids in Los Angeles, law enforcement officials seized counterfeit software and other material with a potential retail value in excess of more than

\$10.5 million. Software, manuals, and hologram labels were found, along with four pounds of plastic explosives, two pounds of TNT, shotguns, handguns, and silencers.

Many American industries have been hurt by counterfeiting. The automobile industry in the United States has lost more than \$12 billion from the sales of counterfeited parts such as brake pads and oil filters. Industry statistics indicate that if these counterfeit parts were removed from the market, more than 200,000 additional workers could be hired.

In 1993, the computer software industry estimated its losses from counterfeit sales at over \$12.8 billion. Counterfeit sales represented 55 of the software market that year. In April of 1995, the U.S. Customs Service discovered 29,000 counterfeit Microsoft holograms at San Francisco International airport, arriving from Hong Kong. 47,000 holograms had been seized the month before at a residential counterfeit factory operated in Rowland Heights, California.

Even more distressing than the economic cost of counterfeiting is the threat that this crime poses to the health and safety of every American. For example, a helicopter crash killed a traffic reporter during a live broadcast in 1987. Federal investigators later discovered, after a series of similar accidents, that more than 600 helicopters sold to both NATO and private entities contained counterfeit parts.

In 1992, 219 cases against makers of counterfeit airplane parts were referred to grand juries. The Department of Transportation has reported numerous cases across the country where individuals and companies have been charged with the manufacture and sale of mislabeled and counterfeit airplane parts. In 1994, two top managers of a California parts firm pled guilty to defrauding the FAA and private aircraft companies by selling "unapproved" parts such as counterfeit combustion liners. Combustion liners are critical components on jet engines that confine the heat of the combustion process to a particular region of the engine.

Examples of counterfeit activity abound in a variety of other industries. Counterfeiters recently sold a copy of a popular infant formula that was potentially harmful to any child allergic to particular ingredients used to make the fake product. A counterfeit version of a well-liked shampoo was found to contain bacteria that could cause infection in users with weakened immune systems. Counterfeit brake pads made from wood chips and other substandard materials have caused deadly automobile accidents. Counterfeit bolts and fasteners have caused bridge joints to fail and military equipment to break down.

In 1984, Congress passed the Trademark Counterfeiting Act, which began to address the problem of counterfeiting. That legislation is now inadequate to deal with the highly organized, international business of counterfeiting. In the past eleven years, counterfeiting has grown dramatically and now results in serious and widespread consequences. This country needs new legislation that reforms federal anticounterfeiting laws.

H.R. 2511 provides for the seizure and destruction of counterfeit goods. All federal officers would be able to assist in making ex parte seizures of counterfeit merchandise, which would enable officers to get proof of counterfeit transactions before it vanishes. Law enforcement officers would be also able to seize vehicles, tools, and equipment used to transport counterfeit merchandise. The U.S. Customs Service would be required to destroy all counterfeit merchandise seized, unless the trademark owner consented to some other disposition. Customs officials could no longer re-export counterfeit merchandise, a practice which currently perpetuates continuing violations of intellectual property rights.

The crime of trafficking in counterfeit goods or services would constitute a "predicate act" for purposes of the criminal Racketeer Influenced and Corrupt Organizations Act, known as RICO. Current RICO laws have no predicate offense that involves counterfeiting, which poses a significant obstacle to the efforts of federal officials against organized crime syndicates. In the recent seizure of over \$10.5 million in counterfeit Microsoft products, the Los Angeles U.S. Attorney's Office declined to take part in the case, because the RICO laws traditionally used against criminal organizations do not apply to counterfeit activity.

This legislation specifically addresses an area in which counterfeiting has been prevalent in recent years—the computer software industry. H.R. 2511 makes it a crime to traffic in computer software programs, computer program labels and computer software packaging. Current law already protects record and video labels, and this same benefit should certainly be offered to the computer industry, where 55% of all products in the software market are counterfeit and holograms and other authentication devices are so frequently falsified.

H.R. 2511 heightens enforcement efforts and penalties, to deter counterfeit activity and to aid those who have been injured by counterfeit products. The U.S. Customs Service would be permitted to impose a civil fine on those involved in the importation of counterfeit goods, up to the market value of the merchandise if it were

genuine, and doubled for repeat offenders. Statutory damages would also be made available in the court's discretion as an alternative to actual damages in cases involving counterfeit goods. Defendants in many counterfeiting cases keep falsified records of their sales, if they keep records at all. This lack of evidence makes proving actual damages extremely difficult.

H.R. 2511 requires the Attorney General to collect and publicize statistical information from all U.S. Attorneys' offices related to trafficking investigations and cases. The Attorney General would then be required to include this information in an annual report to Congress on the business of the Department of Justice. Other record keeping requirements require customs entry documentation relating to goods shipped on a vessel or aircraft to include trademark information about goods or packages to determine whether the merchandise bears an infringing trademark. These informational requirements present a minimal additional burden for the Customs Service, if any, and allow the private corporations harmed by counterfeiting to aid in the enforcement of federal anticounterfeiting law.

Mr. Chairman, in just over the ten years since Congress passed the Trademark Counterfeiting Act, the loss to legitimate businesses due to counterfeiting has jumped from \$5.5 billion a year to nearly \$200 billion annually—a more than 3,000 percent increase. Any other industry that experienced this kind of growth would make the covers of every business magazine in the country. Obviously, however, the faces of the men who run the counterfeiting syndicates are more likely to be seen on an FBI's Most Wanted list.

H.R. 2511 provides federal law enforcement officers with a more sophisticated structure to match today's more sophisticated, international illegal counterfeiting operations. This legislation will give law enforcement officials the means to put an end to this illegal trade, stem losses legitimate businesses suffer in profits and to their good name, and protect millions of Americans from harmful and ineffective counterfeit consumer products. Thank you for this opportunity to testify, and I will be happy to answer any questions.

Mr. MOORHEAD. Mr. Bliss, both you and Ms. Simmons-Gill spoke about the case of the counterfeit infant formula. I think every parent or grandparent is very concerned about that kind of thing because it can very definitely hurt minor children that can't protect themselves at that age.

Would you like to tell us a little bit more about that particular instance and how widespread is that kind of activity with children's products?

Mr. BLISS. Well, I think the FDA is still actively investigating the possibility of further counterfeits in the baby formula area as they do investigate counterfeits in a number of other products that present health and safety risks.

To date, we know that counterfeit infant formula or infant formula that was misbranded and had counterfeit boxes and counterfeit labels was found in 16 States—Arizona, Alaska, California, Connecticut, Florida, Louisiana, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Pennsylvania, Rhode Island, Texas, and Washington. It may well have been in other parts of the country but they were fortunate in getting at that problem earlier rather than later.

The disturbing part about the infant formula counterfeit is that it signals a trend in that counterfeits are now no longer just appearing on the streets in swap meets, in flea markets, and in the city, essentially where counterfeits are likely to be sold, and sometimes in small boutiques. But they are now being sold in legitimate retail stores.

The Head and Shoulders that you spoke about, Congressman Goodlatte, was available in the CVS Pharmacy. The infant formula was available at Safeway, a traditional grocery store. And there is very little that a—even a knowledgeable consumer could have done

to distinguish the real from the fake which, frankly, is all the more reason why your legislation needs to pass. If a consumer can't tell the difference, what is a consumer to do? Hope for stronger legislation that puts the fear of God into the counterfeiters.

Mr. MOORHEAD. Do you have anything to add to that Ms. Simmons-Gill?

Ms. SIMMONS-GILL. I was—pardon me, chief trademark counselor for a pharmaceutical company and we were in constant fear of product—and it was a multinational pharmaceutical company, meaning its products were shipped all over the world. In fact, because of the dispensing in pharmacies of most prescription products, we were—we—it was very rare to find a problem with prescription products in the United States although we did see some problem with consumer products being replicated, meaning they would print fairly exact labels on a pHisoHex bottle and simply put in an ineffective product. In the pharmaceutical industry, inefficacy was the most serious problem. You believed you were taking your heart medicine and you were taking nothing.

However, with respect to prescription products, the most serious problems of ineffective—of ineffective pharmaceutical products were U.S. products distributed or products where the trademark had first developed in the United States being distributed outside of the United States. We had some birth control pills that were not effective and some high blood pressure medicine that was not effective. So the pharmaceutical industry has fears outside of the United States for prescription products but within the United States for consumer products.

Mr. MOORHEAD. Miss Small, you testified that it cost your company \$4 million in prosecuting recent cases of counterfeiting. Disney, Warner Bros. and many other of the large manufacturers that are involved with toys also have a major anticounterfeiting operations. How much work is the industry itself doing to try to fight counterfeiting?

Ms. SMALL. The industry is doing a great deal. We actually are trying to work together in part through the IACC, the International Anticounterfeiting Coalition, and in part through these civil actions where we all join as plaintiffs. We would all use the same private investigators and we use the same lawyers and go in and try to go in as a group because the counterfeiters, they don't go well, I want to make counterfeit Mighty Morphin Power Rangers T-shirts. They will make Looney Tunes T-shirts, Disney T-shirts, sports teams T-shirts, you know, whatever trademarks they believe will sell. So the more trademark holders that can get together in an action, the greater the impact of the seizure when you go in. Unlike criminal law, in a civil action, even if there is counterfeit, for example, Hugo Boss at the location, we have no authority to do anything with that merchandise unless Hugo Boss is a plaintiff in the action. So the more plaintiffs that work together, the greater the impact on the individual manufacturer. So we are definitely working together in that way.

Mr. MOORHEAD. Could you elaborate on the need for requiring the Department of Justice to compile a report and report anticounterfeiting statistics so that they are available for you as proposed in section 4 of Mr. Goodlatte's bill?

Ms. SMALL. Well, I believe right now that there is a great lack of information about the actual amount of counterfeiting that is—counterfeit goods being sold in the United States, and I believe that any information we can get will help us.

I think that I have to go to my boss to justify why I spend all this much—this much money, and I can only estimate how much I think that we are losing based on the tip of the iceberg of the amount of goods that I actually seize. And so I think that we are basically operating in the dark and that this information will both show the Government but the American public the nature of this crime.

Mr. MOORHEAD. How valuable is a trademark and what does counterfeiting do to the value of that trademark, Mr. Bliss?

Mr. BLISS. I think Angie might be more appropriate to respond to that, but let me just say for starters that you have entire companies who have been once popular, had once popular brands that are not around anymore. And one example is LaCoste and the alligator. Most of the companies in our organization, the IACC, have multimillion-dollar budgets dedicated to protecting their trademark and their company's name. And it is particularly critical with respect to copyright piracy, where in many instances the whole value of the company is tied in to its copyright.

When you lose software, you lose the whole product when it is pirated. Whereas if you lose—if you have a trademark property which is counterfeited, you are losing some aspect of the public's goodwill. But it is a significant problem. They are spending a hell of a lot of money and it doesn't even scratch the surface in protecting their own reputations.

It is particularly acute in the auto industry, for example, where if you have a counterfeit auto part that results in a car accident, perhaps one that involves a fire, the company is in the untenable position, GM, Chrysler, Ford, of proving that it wasn't their fault, that it wasn't a legitimate GM component of that car that resulted in the fire and the accident that killed the person driving it.

Mr. MOORHEAD. I know a lot of people buy Rolexes because it is the thing to do to have a Rolex. If you can go out and buy one for \$18 down on K Street or wherever it is, sooner or later it will reduce the value of a real Rolex.

Mr. BLISS. Absolutely.

Mr. MOORHEAD. And that would be true of other products.

Ms. SMALL. Yes, absolutely. Especially in the case of the entertainment industry, trademarks and copyrights are all that we own. The television show and the characters are protected under copyright law. The name of the show, which becomes the name of the toys, Mighty Morphin Power Rangers, is a trademark. That is what we license to our licensees, the trademarks and copyrights. That is all really that we own. So it is everything in the entertainment industry.

Mr. MOORHEAD. I know, Ms. Simmons-Gill, you said that copyright is no longer just a national concern, it is international. We have another problem that this bill can't cover. But South Africa recently rejected permission for a McDonald's to open a store in their country using their logo and the name McDonald's. They were rejected not because it conflicted with a similar trademark in their

country but because another company there wanted to use their logo and their name.

Ms. SIMMONS-GILL. That is correct, sir.

Mr. MOORHEAD. And that could be a serious thing internationally if that were to proliferate.

Ms. SIMMONS-GILL. That is a serious thing.

The problem in South Africa which in fact we sent an affidavit in support of the appeal in the first case and McDonald's sought a second case as well, the problem in South Africa is somewhat unique.

McDonald's, during the period of the time when it was inappropriate for U.S. businesses to do business in South Africa, continued to register and maintain its trademark registrations. However, the statute in South Africa, like our statute in the United States, requires use after a certain period of time. And McDonald's, under the strictures that were in force during that particular period of time, was not permitted to use its trademark.

There has been legislation introduced in—introduced and passed in South Africa which supports the notion of famous trademarks, whether used or not. Unfortunately, the judge permitted—I think not without grounds—the use of McDonald's by this person that we consider a pirate based on the use of that mark by the pirate over a substantial period of time during which McDonald's was actually not using the mark.

The famous trademark law could be implemented to permit a sort of a permission to grandfather in worldwide famous trademarks which were not in use during that particular time and that that particular fact is being addressed. I think that it is a rather specific instance in South Africa relative to the whole period of time during which U.S. companies did not do business in South Africa and steps were being taken—and I have hope actually that even that particular problem will be turned around with legislation.

Mr. MOORHEAD. Thank you.

I am going to let Mr. Goodlatte take the Chair at this point. I have the Governor of California coming to a meeting that I have to be at. And I will stay for a few minutes. I have got to get over to the Capitol by noon. So would you? I want to thank you all for coming today. It has been very valuable.

Ms. SIMMONS-GILL. Thank you, Mr. Chairman.

Ms. SMALL. Thank you, Mr. Chairman.

Mr. GOODLATTE [presiding]. I would like to thank all of you for coming as well and for your valuable testimony. I would like to ask all of you, perhaps start with Ms. Simmons-Gill, what you think about the administration's proposed changes in the bill?

Ms. SIMMONS-GILL. Mr. Goodlatte, I have reviewed the written testimony and it seems to me that most of the suggestions are somewhat housekeeping, most of them, not all of them, are somewhat housekeeping. Many of them are specifically directed at copyright issues which I am familiar with in my private life as a general counsel but the INTA specifically limits itself to trademark issues. I personally and in my private life have no problem with those specific amendments.

The only situation which I think that we—that I would like to address is I do think that there is value on—in causing some kind of documentation. I don't believe that any counterfeiter is actually going to put down that he has an infringing trademark on the goods. But the requirement that the goods of import have to indicate the trademark on the goods with some more specificity will certainly be helpful in the tracking process. There is no question in my mind. So I would suggest that that is an appropriate part of the bill and would seek to work with the administration on finding some appropriate sort of additional documentation as well as recordkeeping which would, as Ms. Small said, be extraordinarily helpful.

It is very difficult, very difficult to document the financial affect of counterfeiting so anything would help in that area. Other than that specific suggestion, I believe that the suggested amendments are mostly housekeeping and more or less acceptable.

Mr. GOODLATTE. Mr. Bliss.

Mr. BLISS. Congressman, I haven't had the opportunity to review Mr. Hampton's testimony. I did listen to what he had to say, but two points caused me some possible concern. Based on what he said today, his comments with respect to the trafficking in labels. I think his words were "that may go too far."

I think quite the contrary, it is necessary to avert a very large loophole from being exploited. It may go too far to the extent that he is—that he thinks we are speaking about labels that bear no evidence of being tied to a larger operation. But I think in most cases, certainly in the Microsoft case that I have referred to earlier, it was very clear that the trafficking of those labels were part and parcel of the larger counterfeiting operation.

With respect to the point that he made about concerns that your provision relating to disclosure of Customs entry documentation might be unduly burdensome on the importers, I would just hope that we balance whatever burdensomeness issues there may be for importers and on the Customs administration with the interest of Americans in protecting themselves against products coming through the borders that may kill them. I think to the extent that we can, as your bill does, provide greater information, protect against that from occurring, it is a good thing and it ought to outweigh some burdensome issues as it relates to importers.

Mr. GOODLATTE. Thank you.

Ms. Small.

Ms. SMALL. I will agree with Mr. Bliss and just reiterate that I think the more information that we can get on importation documents, the more helpful it will be in allowing Customs to do the job they do so well.

Ms. SIMMONS-GILL. Could I add, Mr. Goodlatte?

Mr. GOODLATTE. Sure.

Ms. SIMMONS-GILL. Because I think I missed this earlier.

It is clear to me as an employee of several companies, including Sears which was the largest dollar volume importer in the United States, the manufacturing of labels is an entirely separate process from the manufacturing of apparel or most other goods, and in fact we had many Sears brand items and the labels were always manufactured or almost always manufactured, regardless of the country,

by a different entity than the manufacturer of the goods themselves, so I believe that the manufacturer of labels in and of itself is perhaps even more significant in many cases, although not in every case, than the manufacturer of simply a shirt that is going to bear that label in the future.

Mr. GOODLATTE. Thank you.

Mr. Bliss, you indicated that counterfeit operations are often connected to violent crimes, and obviously that is a priority for law enforcement, and counterfeiting has apparently not been the priority that we would like it to be.

Can you describe to the extent that this is true why it occurs and how this legislation will tie that together, maybe encourage some greater attention to the counterfeiting aspect of the problem?

Mr. BLISS. I think we are all being educated about the growing links between organized crime and counterfeiting—we all meaning law enforcement and the owners of trademarks. I think a few years ago even owners of some of these properties would not have in their wildest imaginations believed the counterfeiters would be part of a larger organized operation. But it is undeniably true today that the counterfeiters have manufacturing facilities, distribution networks, sales forces, labor forces every bit as sophisticated as legitimate U.S. businesses, and they have those for a reason. They are going to make a hell of a lot of money counterfeiting U.S. trademarked and copyrighted property. They do this as part and parcel of larger diversified criminal operations. They will counterfeit, they will extort, they will engage in credit card fraud, they will run prostitutes, they will run drugs, they will run guns. And it is, to the extent that law enforcement gives them some heat in one area, where they move on to one of their other product lines. It is just good business almost for them.

Counterfeiters seem to specialize—organized crime syndicates seem to specialize in certain forms of counterfeiting. For example, in Mexico you have a strong concentration of auto parts and pharmaceutical counterfeiting; Brazil and Argentina, you see a lot of chemicals and pharmaceuticals; Spain, medication, Tylenol, AZT, AIDS drugs; Russia, auto parts, pirated videotapes. There is quite a degree of sophistication among a broad variety of organized crime groups, and we are talking about not only traditional forms of organized crime, such as the Italian Mafia in Italy behind luxury goods, but you are also talking about what heretofore have not been known as organized crime groups, such as the Korean gang in New York, the Born to Kill.

There are Muslim groups. There is recent testimony that those responsible for the bombing of the World Trade Center were funded in part by the sale of counterfeits through other Middle Eastern groups. Israelis in New Jersey, Russians, Senegalese, Vietnamese, Chinese groups, you name it, they are all starting to realize that counterfeiting is good for two things: It makes a hell of a lot of money for them with little risk of prosecution and it is a great way to launder drug money.

Mr. GOODLATTE. And legislation making this a RICO predicate act helps to focus on the organized crime nature of this as well?

Mr. BLISS. Absolutely. As Mr. Hampton said, it allows law enforcement to go after the organization rather than prosecute a specific event.

Mr. GOODLATTE. In your opinion, is it necessary that law enforcement officers be able to seize the aircraft and vehicles, other equipment used in connection with the distribution of these counterfeit merchandise?

Mr. BLISS. I think it would be a very effective additional tool in their arsenal to be able to hit them where it hurts, to get their transportation equipment seized. Right now you can get the proceeds of the activity, the goods themselves, but you aren't able to get the equipment associated with the activity. And with that provision of your bill, you would be able to get the vehicles and that would be a significant hit to their bottom line.

Mr. GOODLATTE. I understand the computer software industry in the United States has been especially hard hit by counterfeiters. Can any of you elaborate on how and to what extent it has been damaged?

Mr. BLISS. As I said in my prepared remarks, I think the software industry claims that they lose more in profits, there is \$12.8 billion lost which is greater than the profits they earn in a given year depending on what area of the world you are talking about. In the Far East, for example, the piracy rate is 90 percent, so it is clearly a barrier to entry to even compete in that region. I think on average, the piracy rate is about 45 to 50 percent, but it is a huge problem for the software industry.

Mr. GOODLATTE. OK.

Ms. Small, you seem to have a great deal of experience in actually participating in these raids and so on that have taken place. Can you explain how much of an impact sections 6 and 8 of my legislation which make it the rule rather than the exception that seized counterfeit goods are destroyed would have on the company's anticounterfeiting efforts?

Ms. SMALL. My understanding is that there is also an alternative for the trademark owner to otherwise dispose of them. It is currently Saban's policy to donate the vast majority of the goods which it seizes to a company called World Vision which then distributes them in disadvantaged areas of the world, mostly in central Africa. The clothing items.

Mr. GOODLATTE. I take it that would not include the ones that have hazardous—

Ms. SMALL. Yes. World Vision is responsible for determining whether or not the goods are safe. Generally, the toys that have small parts are destroyed. But clothing items that have some useful purpose, where we don't have licensees that are competing, we send those clothing items so that they can be put to some good. And to a child that doesn't have a lot of clothing, it doesn't particularly matter whether the design washes off the front of the shirt when it is laundered.

But I think it is very important that the goods not simply be re-exported and I also think it is important that they not be donated to charity within the United States without the trademark owner's consent. Our licensees pay a royalty rate between 8 and 15 percent depending on what the particular item is and it is especially unfair

to the licensee to have counterfeit merchandise put in the stream of commerce with the licensed merchandise. So I think that the alternative to destroy it or to let the trademark holder otherwise dispose of it as they see fit is very important.

Mr. BLISS. If I could add one thing, Congressman, on that point?

Mr. GOODLATTE. Sure.

Mr. BLISS. It is nonsensical that we spend all our time and energy trying to seize the counterfeits within our borders but then permit the goods to be reexported, some Customs officials have told our members that they have seen the same counterfeits reappear at their ports three or four times. Now, at a time when we—all our agencies are looking to cut funds and be leaner and meaner, it makes absolutely no sense that they should be spending their time seizing and detaining the same goods three or four times.

Mr. GOODLATTE. I agree.

Let me thank all of you for coming to participate today and for your contributions. It is very valuable and I hope that we have established a case, and I think we have, to move forward with this legislation as rapidly as possible. We thank you all.

And without any further business, this hearing is adjourned.

[Whereupon, at 12:05 p.m., the subcommittee adjourned.]



## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING



INFANT FORMULA COUNCIL

Suite 500-G • 5775 Peachtree-Dunwoody Road • Atlanta, Georgia 30342 • (404) 252-3663 • Fax (404) 252-0774

December 6, 1995

The Honorable Carlos J. Moorhead  
Committee on the Judiciary  
Chair, Subcommittee on Courts and Intellectual Property  
B-351A Rayburn HOB  
Washington, DC 20515

Dear Chairman Moorhead:

I am writing this letter in support of H.R. 2511 on behalf of the Infant Formula Council, the trade association of manufacturers of infant formulas in the United States,\* and commend you for holding a hearing tomorrow on this most important legislation.

Infant formulas are often sole-source food products for the most special and vulnerable segment of our society, newborn babies. While the notion of counterfeiting products is usually viewed in the context of cheap imitations of expensive consumer and other products, those who counterfeit products and product labels have actually done so with infant formulas as well, thereby exposing innocent babies to the potential health risks of improperly labeled, formulated or manufactured infant formulas. Thanks to the alert work of both industry and the Food and Drug Administration (FDA), a potential disaster was averted earlier this year.

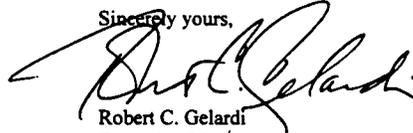
FDA continues to be diligent in maintaining the safety of infant formulas against the threat of counterfeiting, and the manufacturers of infant formula in the U.S. are working closely with FDA to help prevent a significant public health problem in this country. This potentially serious problem can be dealt with much more effectively, however, if those responsible are subjected to criminal statutes and sanctions serious enough to deter such actions. Consumers have a right to get what they are paying for. Therefore, we support H.R. 2511 as a reasonable step in preserving both public health and free enterprise.

Tough new laws helped deter repetitions of the terrible product tampering incidents of a few years ago in over-the-counter drug products. By making such activities punishable as serious crimes, Congress sent a clear message to those who would endanger the public health by tampering with products. To do less in the area of counterfeit products is to

The Honorable Carlos J. Moorhead  
December 6, 1995  
Page 2

preserve a loophole for those who would dare risk the health of the innocent in making illegal money. If H.R. 2511 is not passed, we will have missed a significant opportunity to protect both the economic interests of consumers and the continued good health of infants.

Sincerely yours,



Robert C. Gelardi  
Executive Director

RCG/jcm

cc: The Honorable Bob Goodlatte  
The Honorable Patricia Schroeder

\* The Infant Formula Council is the association representing manufacturers of infant formula in the United States. Its members are Carnation Nutritional Products, Division of Nestlé Food Company; Ross Products Division, Abbott Laboratories; and Wyeth-Ayerst Laboratories, Division of American Home Products Corporation.



## U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 20, 1995

The Honorable Carlos J. Moorhead  
Chairman, Subcommittee on  
Intellectual Property  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter provides comments from the Department of Justice regarding H.R. 2511, the "Anticounterfeiting Consumer Protection Act of 1995." The Department is fully supportive of Congress' efforts to prevent commercial counterfeiting of trademarked and copyrighted merchandise, and to control the unlawful importation of same. We believe, however, that some of this bill's provisions should be strengthened or expanded, and recommend some changes to other provisions, to more appropriately facilitate our enforcement responsibilities.

Section 2 of H.R. 2511 would expand the definition of what constitutes "racketeering activity" under 18 U.S.C. § 1961(1)(B), to include acts indictable under 18 U.S.C. §§ 2318, 2319, and 2320. We recommend that 18 U.S.C. § 2319A (relating to the unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances) also be included in this list, as it is reasonable to assume that many of the same entities that derive ill-gotten proceeds through systematic violation of §§ 2318, 2319, and 2320 might also seek to exploit sound recordings and music videos of live musical performances.<sup>1</sup>

Section 3 of H.R. 2511 would expand the coverage of existing 18 U.S.C. § 2318 (relating to trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works) to include activities involving labels for computer programs, computer program documentation or packaging. We believe that the proposed amendment to subsection (a) of 2318

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<sup>1</sup> This is particularly true insofar as the technology that is required to produce pirated or counterfeited copies of sound recordings on compact disk, or computer programs on CD-ROM (expensive technology that often demands a large initial investment), can be used to produce "bootleg" recordings on compact disk with little or no modification.

- 2 -

should instead read "a computer program or computer program documentation or packaging or a copy of" (additional language in redline), in order to retain the original grammatical structure of the remainder of the provision. We also believe that the amendment to subsection (c)(3) should be revised to read "a copy of a copyrighted computer program or computer program documentation or packaging," (additional language in redline), as it is the copyrighted nature of the underlying work that confers federal jurisdiction under this subsection.<sup>2</sup>

Section 4 of H.R. 2511 would create unprecedented and unnecessarily burdensome reporting requirements for all "actions" involving materials that are the subject matter of 18 U.S.C. §§ 2318, 2319, or 2320. Section 4 would require that reporting be made "on a district-by-district basis" and include a complete accounting of all "open investigations." We find this provision to be extremely ill-advised. By requiring the disclosure of the precise number of "open investigations" in a given district, the law may serve to warn targets in that district, jeopardize ongoing investigations, and undermine the secrecy of the grand jury process.

As to section 5 of H.R. 2511, existing provisions of the Lanham Act, 15 U.S.C. § 1051 et seq., grant to federal district courts the authority to issue injunctions and order seizures, upon ex parte application, of goods and counterfeit marks involved in violations of law. The act currently provides that the court "shall order that a United States marshal or other law enforcement officer . . . serve a copy of the [ex parte seizure order] and then . . . carry out the seizure under such order." 15 U.S.C. § 1116(d)(9). The proposed amendment would permit a court to order the seizure of an aircraft, vehicle or vessel used in connection with a violation of the Lanham Act, and would permit seizures to be made "by a Federal law enforcement officer (such as a United States marshal or an officer or agent of the United States Customs Service, Secret Service, Federal Bureau of Investigation, or the United States Postal Service)" or by "a State or local law enforcement officer."

Inasmuch as current law allows "a United States marshal or other law enforcement officer" to serve a copy of the order, we

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<sup>2</sup> It is for this reason that the current 18 U.S.C. § 2318(c)(3) requires that counterfeit labels actionable under the statute be affixed to or enclose "a copyrighted motion picture or other audiovisual work, or a phonorecord of a copyrighted sound recording." 18 U.S.C. § 2318(c)(3) (emphasis added). Presumably, the jurisdictional requirement of an underlying copyrighted work would also pertain to applications of the statute involving documentation and packaging.

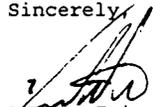
- 3 -

are not sure why providing a list of possible agents is instructive. For consistency, we would suggest cross reference to an existing law; for example, "or other law enforcement officer as defined in Federal Rule of Criminal Procedure 41(h)."<sup>3</sup>

Section 6 of H.R. 2511 creates a new Title 15 provision for the seizure and forfeiture of illegally imported merchandise bearing a counterfeit mark. Pursuant to 28 U.S.C. § 2461, the procedures for such forfeitures would be covered automatically by the Federal Rules of Civil Procedure Supplemental Rules for Certain Admiralty and Maritime Claims, i.e., by judicial forfeiture in court. We note that low-value and unclaimed counterfeit imported merchandise could be forfeited more efficiently if, like 17 U.S.C. § 603(c) (which is otherwise amended by section 8 of the subject legislation), such merchandise were to be made forfeitable "in the same manner as property imported in violation of the customs revenue laws," i.e., either administratively by the seizing agency or judicially by the court pursuant to the customs laws forfeiture procedures in 19 U.S.C. §§ 1607-1609.

We thank you for the opportunity to present our views on this important matter, and we would be pleased to meet with your staff to discuss the issues raised if that would be helpful to you. The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

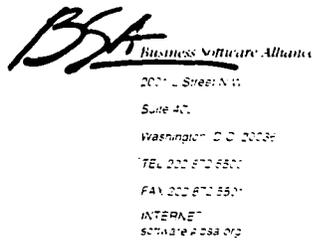


Andrew Fois M.A.F.  
Assistant Attorney General

cc: The Honorable Patricia Schroeder  
Ranking Minority Member

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<sup>3</sup> In addition, we question whether State and local law enforcement officers who carry out seizures pursuant to federal court orders might be deemed "federal employees" for purposes of the Federal Tort Claims Act, and request that the issue be clarified in the legislative history.



# Fact Sheet

## COUNTERFEIT SOFTWARE -- A GLOBAL THREAT

### OVERVIEW

Counterfeit software products (which include CD-ROMs, software diskettes and packaging, manuals, and holograms) make up a significant portion of the pirated software programs in the distribution channel. Illicit dealers distribute these goods not only in Asia and Latin America, but also throughout Europe and the United States. Once sold primarily in black markets, these products have now found their way into the main distribution chain, fooling unwary customers and further stripping software companies and legal dealers of legitimate sales. Counterfeit software products are a particular concern because production methods have become increasingly sophisticated, allowing for the creation of a duplicate program that looks almost identical to the genuine product.

Software theft in all forms, including counterfeiting, currently costs the software industry and distribution channel more than \$15.2 billion worldwide annually.

### UNITED STATES

- According to the Intellectual Property Rights division of the U.S. Customs Office of Strategic Trade, counterfeit software goods are one of the top ten intellectual property goods seized by Customs. Customs has confiscated nearly 100,000 counterfeit holograms in the last eight months alone. Major ports of call for these goods include various Alaskan ports, Los Angeles, and San Francisco.
- In recent years, indigenous counterfeit manufacturing plants have been set into operation throughout the United States. Although pirated holograms and CD-ROMs are still typically imported, many manuals, disks, and packaging are now counterfeited in the U.S. These operations are often linked to organized crime. It is suspected that there are currently distributors for these goods located in nearly every state.
- The Los Angeles Organized Crime Division of the LA Sheriff's Department seized more than \$21.6 million in counterfeit software products in a series of three raids in 30 different locations in February, March, and May of this year.
- The Business Software Alliance supports the House and Senate versions of the "Anticounterfeiting Consumer Protection Act" -- introduced by Senator Hatch (R-OR) in the Senate and Congressman Goodlatte (R-VA) in the House. These bills, if passed into law, will make it a crime to traffic in counterfeit products, including software labels and packaging, and will provide law enforcement officials with the tools to confront this problem effectively.

-more-

- BSA is a member of the International Anti-counterfeiting Coalition, representing a cross section of U.S. industry, including software, auto, apparel, pharmaceuticals, publishing, and entertainment. According to the IACC, five to eight percent of all products and services worldwide are counterfeit, costing more than \$200 billion each year.

#### ASIA

- CD-ROMs and other pirated goods currently travel through expansive international counterfeit rings, including one of the most widespread operations originating in China and linking Hong Kong, Taiwan, the United Kingdom, parts of Latin America, and the United States.
- Current investigations by the Business Software Alliance (BSA) in 18 of the 28 confirmed CD-ROM manufacturing plants in China reveal that they continue to produce compilation disks with hundreds of products, valued at more than \$10,000 - \$20,000 (US). These fakes are then sold for a mere \$6 - \$10 (US). Despite the sweeping Intellectual Property Agreement reached with China in February, these egregious operations continue.
- Hong Kong Customs and Excise announced, as of August of this year, that it has seized more than 100,000 counterfeit CD-ROM programs in 1995 -- compared to 5,000 found in all of 1994.
- Acting on complaints by BSA in August of this year, the Chengdu Administration for Industry and Commerce and the Chengdu Trademark Services conducted raids against 22 shops within major computer markets in Chengdu and Sichuan, China, seizing more than 1,000 illegal CD-ROMs.

#### EUROPE

- Counterfeit software is openly sold throughout flea markets in Soviet Republics.
- There is clear evidence that CD-ROM presses are in full operation in Bulgaria. It costs, on average, the equivalent of a mere \$750 (US) to purchase a CD-ROM press in Europe.
- In Poland, counterfeiting contributes largely to the 86% piracy rate. BSA announced that 16 street markets were recently closed where all software goods were counterfeit. However, it is illegal to conduct "test" purchases (purchases made by investigators to collect evidence) in Poland, making it nearly impossible to make further progress against this illicit activity.
- The Business Software Alliance is a member of the Union des Fabricants in Paris, set up in the 1800's by Moet et Chandon to register trademarks and brands in an effort to curb counterfeiting. Recently, various counterfeit software goods were added to the expansive display in the organization's Musee de la Contrefaçon (museum of counterfeiting).

 **THE INTERNATIONAL ANTICOUNTERFEITING COALITION**  
 1100 CONNECTICUT AVE., NW • SUITE 1150 • WASHINGTON, D.C. 20036 • TEL 202.223-5728 FAX 202.872-5848

## *FACT SHEET*

### **Background**

The International AntiCounterfeiting Coalition, Inc. (IACC) was formed in 1978 by fifteen companies concerned with the increasing problem of worldwide commercial counterfeiting. Today, the IACC has more than 160 members, from Fortune 500 companies, major international law firms, and business trade associations, to private investigators and product security companies — all of whom share a common concern for the protection of intellectual property rights. The IACC focuses on the concerns of its members and coordinates their efforts for the mutual benefit of all of the enterprises represented in the Coalition.

### **Mission**

The touchstone of the IACC's mission is to combat counterfeiting and piracy by promoting laws, regulations and directives designed to render theft of intellectual property undesirable and unprofitable. The IACC serves as an umbrella organization, offering anti-counterfeiting programs designed to increase protection for patents, trademarks, copyrights, service marks, trade dress and trade secrets.

Critical to the IACC's purpose is the belief of its members that acts of counterfeiting and piracy can and do create severe public health risks and safety hazards, as well as economic harm. The IACC both initiates actions and supports government actions that will ultimately result in increased enforcement, lead to the prosecution of intellectual property infringers, and create a strong deterrent to counterfeiters.

In an effort to create conditions under which its members' intellectual property rights are safe from copying, infringement and other forms of theft, the IACC engages in substantive dialogue with governments worldwide.

It also provides to law enforcement officials information and training in counterfeit product identification and in the methods of product security to prevent successful abuse of its members' intellectual property rights.

The IACC remains committed to providing improved intellectual property rights protection into the 21st Century and beyond.

## FACT SHEET



The International AntiCounterfeiting Coalition, Inc. (IACC) is the largest multinational organization representing exclusively the interests of companies concerned with product piracy and counterfeiting. Comprised of a cross section of U.S. industry — from auto, apparel, luxury goods, pharmaceuticals, and food, to book publishing, software and entertainment, naming just a few — the IACC's members' combined sales exceed \$500 billion, and account for more than 10 percent of annual U.S. GNP.

Shortly after its formation in 1978, the Coalition's first major project was to lobby Congress for legislation requiring the seizure and forfeiture by U.S. Customs of counterfeit goods. Congress enacted this legislation in October 1978, and with its initial success, the IACC quickly grew into an influential business trade organization.

Then in 1984, recognizing a need for legislation to address trademark counterfeiting, the IACC drafted and proposed to Congress a bill to create new criminal penalties and civil remedies for trademark infringement. And again, the IACC led a grassroots lobbying campaign, and testified before Congress, resulting in the successful passage of the Trademark Counterfeiting Act of 1984.

In that same year, the IACC successfully lobbied for the passage of the GSP Renewal Act of 1984, a law which allows the President increased discretionary power to deny benefits under the General System of Preferences to developing countries who fail to provide U.S. nationals with adequate and effective means to protect IPR.

Today the IACC continues its mission to combat counterfeiting worldwide by working with international lawmakers, enforcement officials, and private organizations:

- In January 1995, the IACC traveled with the USTR to Beijing, China and participated in discussions which led to the historic signing of the Sino/U.S. IPR Agreement.
- The IACC also successfully lobbied for passage of stronger anti-counterfeiting laws in Florida, North Carolina, South Carolina, California, and New York.
- The IACC helped form a U.S.-Mexico border control program designed to increase interdiction of counterfeit goods.
- The IACC drafted strong anti-counterfeiting legislation that formed the basis for the "Anti-counterfeiting Consumer Protection Act of 1995," introduced in Aug. 1995 by U.S. Senate Judiciary Chairman Orrin G. Hatch.

 THE INTERNATIONAL ANTICOUNTERFEITING COALITION, INC.

**Health and Safety Issues Related to Product Counterfeiting**

- FAA officials ordered 6,000 piston powered general aviation planes grounded after a December 1994 incident in which the engine on a Cessna 177RG failed. Inspectors determined the cause of the engine failure to be fractured connecting rod bolts -- bogus, uninspected bolts, in counterfeit packaging.
- In early 1995, a counterfeit-labeled version of the popular infant formula Similac was illegally distributed to grocery store chains in Northern California. Following the findings in California, law enforcement officials found two tractor trailer loads of counterfeit-labeled Similac and other milk substitute products in Kentucky. Weeks after the Kentucky finding, the FDA issued an alert to consumers warning them of the substandard counterfeit-labeled infant formula turning up in some 15 additional states.
- In a story entitled, *Second Hand Safety*, ABC's Brian Ross reported that in 1989, 55 people were killed in a Norwegian plane crash when U.S.-supplied counterfeit bolts failed under stress and the tailpiece fell off. Airline officials investigating the crash determined the probable cause was the U.S.-made counterfeit bolts. (ABC's *Prime Time Live*, Nov. 17, 1994)
- A newspaper report from 1994 recounted the story of the FDA recalling \$7 million worth of intra-aortic pumps used in heart surgery when counterfeit components were discovered.
- U.S. toy manufacturers fear that small children could choke by swallowing parts from inferior counterfeit toys which break apart easily, or be poisoned by the presence of toxic paints.
- Counterfeit cosmetics often contain the residue of industrial solvents and carcinogens which may cause severe allergic reactions when applied to the skin.
- Counterfeit sunglasses have been found to shatter easily, risking eye injury. Counterfeit eyewear often fails to produce ultra-violet ray protection as advertised.
- In 1981, the pharmaceutical company Searle discovered that over 1 million counterfeit birth control pills had been distributed to unsuspecting women, resulting in unwanted pregnancies and internal bleeding.
- Aviation officials believe a faulty clutch made with counterfeit parts was the cause of a 1987 helicopter crash that killed a traffic reporter during a live broadcast. Federal investigators discovered, after a series of similar accidents, that more than 600 helicopters sold to U.S. civilians and NATO were outfitted with counterfeit parts.
- According to a magazine story from 1993, a counterfeit version of the ulcer medication **Tagamet** was found to contain aspirin, causing a woman's ulcer to bleed and develop a dangerous infection. A counterfeit of the antibiotic **Ceclor** caused children in 7 states to endure painful ear infections and risk possible ear damage because they received the wrong treatment.

 THE INTERNATIONAL ANTICOUNTERFEITING COALITION, INCThe Economic Costs of Counterfeiting

- 5% to 8% of all products and services worldwide are believed to be counterfeit.
- Between 1982 and 1988, world trade nearly doubled, growing from \$3 trillion to over \$5 trillion. But U.S. trade revenue losses due to piracy increased by more than 1,000%, from \$5.5 billion to \$61 billion during that same time period.
- Currently, the IACC estimates the economic cost due to product counterfeiting to exceed \$200 billion each year.
- In 1993, U.S. Customs estimated 750,000 jobs were lost due to foreign counterfeiting of U.S. products.
- In 1991, the U.S. auto industry projected it could hire an additional 210,000 workers by eliminating the manufacturing and sale of counterfeit auto parts. Losses cost the industry \$12 billion worldwide.
- Pirates in the Far East illegally copy roughly 80 percent of all U.S. software, virtually closing off entry into those markets by legitimate U.S. software manufacturers.
- According to the U.S. Customs Office of Strategic Trade, \$240 million worth of intellectual property-violative merchandise coming into U.S. ports was confiscated by U.S. Customs between FY1990 and FY1994.
- Intellectual property experts estimate that U.S. software companies lose more to software piracy than they earn in profits.
- Mark Green, NYC Consumer Affairs Commissioner, estimates counterfeiting costs the city over \$350 million in lost tax revenues.
- According to a 1993 *Business Wire* release, product counterfeiting is believed to have cost California \$7.5 billion a year and 25,000 jobs.
- North Carolina Secretary of State, Rufus L. Edmisten, estimates that his state loses \$3 million a year due to the sale and manufacturing of counterfeit products.


**THE INTERNATIONAL ANTICOUNTERFEITING COALITION, INC.**
**Organized Crime and Counterfeiting**

**Organized crime is now heavily involved in product counterfeiting. Why? Counterfeiting operations are relatively risk-free and offer enormous profits. Jim Moody, Chief of the FBI's Organized Crime Drug Operations, has said, "One major crime area coming is the crime of the 21st century – the theft of intellectual property rights ... because it's so safe. Now, if you're a professional criminal, you can get involved in that and you're not likely to get prosecuted, especially outside the United States." What's more, law enforcement officials are finding increasing evidence of "paper trails" of cash flow through which proceeds of more nefarious criminal activity can be laundered.**

- Chinese organized crime syndicates, commonly known as Triads, are increasingly turning to counterfeiting as a source of funds and to launder drug money. Recent estimates total over 160,000 members who operate internationally. Their counterfeiting activities not only involve pirated computer software, but includes pharmaceuticals, credit cards, apparel and accessories.
- Federal law enforcement officials are investigating the possible involvement of the Wah Ching Chinese organized crime syndicate in a recent Los Angeles raid which netted \$400,000 worth of counterfeit Microsoft software, a cache of military explosives and semiautomatic weapons.
- It is suspected that Korean activities in the U.S. are being assisted by the notoriously violent Vietnamese gang, Born to Kill (BTK). Convicted BTK gang leader David Thai publicly admitted to earning over \$13 million from his extensive New York-based counterfeit watch enterprise.
- A six block stretch of New York's Canal Street is considered the hub of Triad-run counterfeiting activities throughout the mid-Atlantic region.
- The Islamic extremists linked to the World Trade Center bombing in New York reportedly raised cash by producing and selling counterfeit products.
- The Irish Republican Army and Loyalist paramilitary groups in Northern Ireland fund their terrorist activities through the sale of counterfeit perfumes, veterinary products, videos, video games, computer software and pharmaceuticals.
- Organized crime groups in different regions specialize in different counterfeit merchandise:
  - Mexico -- auto parts and pharmaceuticals.
  - Brazil & Argentina -- chemicals and pharmaceuticals.
  - Spain -- medication: Tylenol, Advil and AZT, a medication used in the treatment of AIDS.
  - Russia -- auto parts, pirated video tapes.
  - Italy -- handbags, leather goods, pirated cassette tapes and videos.
  - Pacific Rim -- computer software, electronic equipment, toys, watches and accessories.

 **THE INTERNATIONAL ANTICOUNTERFEITING COALITION**  
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## **GET THE FACTS ON FAKES & PROTECT YOURSELF**

To stop the spread of dangerous counterfeits and deter organized crime, we must stop the flow of all counterfeits. Become a smarter shopper. If you suspect a problem with a product, call the manufacturer listed on the packaging. If no manufacturer is listed, definitely suspect the product and contact the store where you bought it. Here's five simple, easy-to-remember tips to help you avoid buying counterfeits.

### **WHAT TO WATCH FOR**

- **PACKAGING THAT HAS BLURRED COLORS, LABELING THAT IS NOT CRISP, OR RIPPED LABELS.**
  - **MISSPELLING OF WORDS, OR ALTERED NAME BRANDS.**
  - **DRASTIC CHANGES IN PRODUCT CONTENT, COLOR, SMELL, OR PACKAGING.**
  - **PRODUCTS THAT LACK PROPER MARKINGS, SUCH AS 1-800 TELEPHONE NUMBERS, MANUFACTURER'S CODES, TRADEMARKS, COPYRIGHTS, BAR CODES, RECYCLING SIGNS, AND HOLOGRAMS.**
  - **IF THE PRICE SEEMS TO GOOD TO BE TRUE ... IT IS.**
- 
- > **IF YOU FIND COUNTERFEIT FOOD OR HEALTH-RELATED PRODUCTS, CALL THE FOOD AND DRUG ADMINISTRATION OR THE MANUFACTURER.**
  - > **FOR COUNTERFEIT SOFTWARE, CALL EITHER THE BUSINESS SOFTWARE ALLIANCE AT 1-800-688-BSA1, OR THE SOFTWARE PUBLISHERS ASSOCIATION AT 1-800-388-7478.**
  - > **TO REPORT INFORMATION ABOUT COUNTERFEIT SPORTS MERCHANDISE, CALL THE COALITION TO ADVANCE THE PROTECTION OF SPORTS LOGOS AT 1-800-TEL-CAPS.**
  - > **FOR MORE INFORMATION ON PRODUCT COUNTERFEITING, CALL THE INTERNATIONAL ANTICOUNTERFEITING COALITION AT (202) 223-5728.**



BY TIM SANDLER

# NEW ACQ

Counterfeit merchandising is a booming business run by shady entrepreneurs — many with links to organized crime — who take advantage of inadequate laws and loose enforcement to sell everything from fake Rolex watches and Disney sweatshirts to ersatz AZT and nuclear-power-plant parts. Experts say it's costing US businesses some \$200 billion a year — and placing public health and safety at grave risk.

**T**his has already been a fruitful day for private investigators Marc Barry and Mike Kenealy. Posing as buyers, sellers of, shall we say, discount merchandise, stores with reputed ties to Asian organized crime are peddling a cornucopia of counterfeit goods — from Timberland shoes and Champion sweatshirts to Tommy Hilf jeans and Carhart jackets.

Now they're browsing through a Blue Hill Avenue bargain boutique where sports-wear marketers by one of their corporate clients to prompt Barry to begin flouting the owner, who's leaning next to a cash register at the front of the store.

"You've got some pretty good prices here," Barry says. He and his friend do a little wholesaling themselves, he continues, and might be able to work out a deal. Barry nods toward Kenealy, who's thumbing through a stack of folded pants.

The owner, a slightly built Cape Verdean, is suspicious of Barry, whose like a classic street hustle. And that's just what Barry wants. If you come in and you pass yourself off as a seller, and they try to hustle you.

"We can get you Champion, we can get you Timberland," Barry says, starting to rattle off a list of popular brand names. The owner seems uninterested and Barry mentions Ray Ban sunglasses.

"You have Ray Ban?" he asks.

Taking the cue, Barry says he's got some quickly returns with a plastic bag full of what appear to be authentic Ray Bans in, er, Bausch & Lomb. The owner raises his eyebrows in approval as Barry notes details on the lenses. Unbeknownst to the other counterfeiter, retailer months before.

"Are these for real?" the owner asks, smiling wryly.

"They're \$6. What do you think?" Barry replies. "Listen, we put these out on a cable near the office building downtown from Thailand. We can order as many as you want."

The owner takes the bait. If Barry is in-

terested in buying some of his wares — which Barry says he is — then the owner may well buy up to 5000 faux Ray Bans to Cape Verde.

Barry and Kenealy leave with the promise of another meeting with the owner, an unwitting source who may lead them to his counterfeit supplier.

These are busy times for the two investigators, who work for Omniquest International, a Quincy-based private detective agency that tracks counterfeit merchandise

for corporate clients.

Last month, Barry and his partner, William O'Brien, a retired 28-year veteran of the Boston Police, orchestrated what is believed to be the largest-ever counterfeit-product seizure in Greater Boston. Armed with a court order and a swarm of hired guns, they raided nine warehouses and confiscated up to \$1 million worth of Looney Tunes merchandise.

Omniquest is one of a new breed of cor-

porate-security firms that have been called upon by US manufacturers to help combat the unprecedented rise in product piracy. Indeed, what emerged in the 1970s as the black market's answer to the dispiriting trade posed to surpass the revenues generated through drug trafficking.

Authorities estimate that US companies now lose close to \$200 billion annually to worldwide sales of counterfeit consumer and industrial goods. That's up from what a US International Trade Commission report estimated to be \$60 billion five years ago.

## CLEAR AND PRESENT DANGER

**T**wo decades ago, law-enforcement officials saw the first signs of what is now a multibillion-dollar counterfeit-goods industry. Authorities say there is little doubt for the boom in black-market counterfeit goods — and for the number of individuals and deaths those products have caused.

"The idea that this is a victimless crime needs to be put out as false," says Donald Anzures, a Washington-based attorney who is legal counsel to the International Anti-counterfeiting Coalition. "Piracy is victimless when the Mob is involved."

Indeed, as organized crime's role in the counterfeit industry has grown, so too have the threats to merchandise poses to the public. For example:

- In 1990, a US General Accounting Office investigation disclosed that more than half of the country's nuclear power plants — including the Pilgrim reactor, in Plymouth, and circuit breakers. The same report found counterfeit parts in Department of Defense, ships, and missiles.
- In 1991, a mother and her child died in Saudi Arabia after the car they were riding in went out of control. Investigators discovered that the car's brake pads were counterfeit hospital-grade glycerine.
- In India, 14 hospital patients died recently when they were administered counterfeit painkillers that contained an industrial solvent. Others died from ingesting fake anti-malaria drugs. Up to 70 percent of all drugs sold in Africa are believed to be counterfeit.
- About 1.5 million counterfeit Omeprazole 21 birth-control pills, manufactured in Spain and distributed in the US in the 1980s, led to numerous cases of internal bleeding and pump, used during open-heart surgery, after it discovered malfunctioning counterfeit parts in the device.
- In 1987, during a live broadcast, a traffic reporter died in a helicopter crash that aviation officials believe was caused by a faulty clutch made with counterfeit parts. In more than 600 helicopters sold to both NATO and US civilians were outfitted with counterfeit parts.

Counterfeit luxury goods are among the most conspicuous sign of an industry that has penetrated the far corners of the worldwide consumer market. And as boundaries of designer apparel, toys, chemicals, pesticides, medical devices, auto parts, military hardware, computer equipment, toys, and food are among the latest products.

The results have been alarming — in some cases, tragic. "Clear and Present Danger," Counterfeit drugs have killed scores of people. Counterfeit parts have been discovered in nuclear power plants, military equipment, and heart pumps. Counterfeit herbicides have caused "cancer clusters."

"Counterfeiting as a problem for industry is clearly exploding," says John S. H. president of the Washington-based International Anti-counterfeiting Coalition, a nonprofit trade organization. "And as the flow of information is freer and faster, and barriers to trade are reduced, we are seeing counterfeiters produced faster in greater volume, with greater accuracy and at lower costs."

The counterfeit industry has also flourished in recent years because of a "Rip-off culture" and judgment who often feel little sympathy for multinational corporations. It's not that mean about lost profits. What's the real harm, they rationalize, in some street vendor making a few bucks selling fake Cartier watches or Gucci handbags?

If it were merely a matter of violating all industries profits and tarnishing reputa-

rate repatriation, then perhaps there wouldn't be quite so much cause for concern. But beyond the loss of revenue to industry there are serious economic consequences. The US economy is losing millions of dollars in tax revenue and tens of thousands of jobs, Bliss explains. In 1993, the US Customs Service estimated that foreign counterfeiting of US products accounted for 750,000 lost jobs.

"When a consumer purchases a counterfeit product," Bliss says, "more often than not he buys his neighbor a pink slip."

**Managed by the Mob**

Industry analysts believe it's no coincidence that the level of danger associated with mislabeled merchandise has grown with organized crime's increased involvement. Like the drug cartels of the 1980s, they say, the organized-crime pirates of the '90s are concerned about profits, not customer satisfaction. The Mafia's reputation wasn't built on comprehensive product guarantees.

"There is no question organized crime is involved in every aspect of this. We've seen it firsthand," Bliss says. "Why wouldn't it be? The profit margins are huge, the risks are low, and equally important to making money is their ability to launder drug money through commercial counterfeiting enterprises."

Moreover, organized-crime syndicates and terrorist groups are emboldened by the relative lack of enforcement in the area of product-pilfering. The Islamic extremists linked to the World Trade Center bombing in New York, as well as members of the Irish Republican Army, have reportedly raised cash by producing and hawk-ing counterfeit goods.

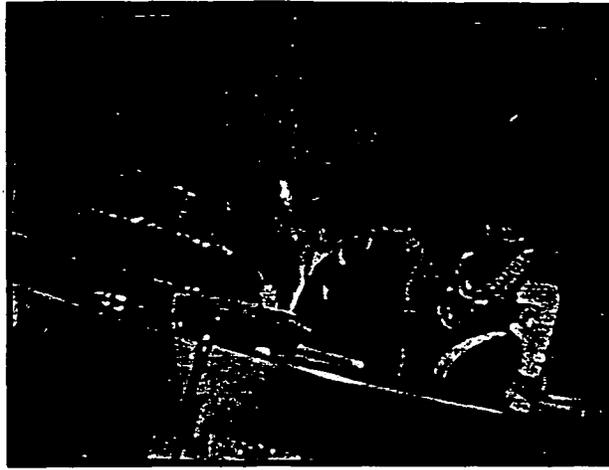
In addition, problems are also common. And though the number of civil cases brought by companies against counterfeiters is growing, criminal prosecutions have been relatively rare. When federal agencies do get involved, they generally focus their efforts on thwarting large-scale, drug-connected operations.

"What is the disincentive if you are organized crime?" Bliss asks. "In some states you're struck with a misdemeanor, a minor fine, and community service. In other states there are virtually no criminal laws. It's particularly true in Massachusetts."

Massachusetts and the rest of New England have become enticing distribution points because of a year-old law in effect in New York — one of the primary ports of entry for counterfeit merchandise — that makes selling counterfeit goods a felony accompanied by jail time and large fines.

"That's why it's flourishing up here," Barry explains. "Word has gotten out, and counterfeiters in New York are now coming to Massachusetts and making a fortune."

The signs are everywhere, he says. The massive flea markets in Revere and Taunton are a boodieg bounty. The number of street vendors in Boston outside South Station and in Post Office Square is growing exponentially. And perhaps most telling, Barry says, is the influx of Asian merchants into low-income neighbor-



LYNDA ROLEX, captured by a hidden camera, peddles her "fabulous fakes." She says her 14-year-old business is so successful that she has a mailing list of about 2000 customers.

hoods, such as Roxbury and Mattapan. "That's when you know you're getting into the heavy turf," he says.

With the impending takeover of Hong Kong in 1997 by the People's Republic of China, the "trads" — the syndicates that have for years lorded it over organized crime — are diversifying and staking out new turf in the US. As a result, the deluge of illegal goods arriving daily at docks on Canal Street in New York's Chinatown is quickly spreading across the Eastern Seaboard.

Organized-crime syndicates have proved to be remarkably adaptive in their efforts to avoid US Customs Service scrutiny. For instance, many now import into the US and other countries seemingly generic watches, handbags, oil filters, and countless other items. Nothing illegal about that. Then, in back-alley buildings, popular brand names — such as Rolex, Levi's, Disney, and Chanel — are imprinted or attached by label onto the goods before they're shipped to warehouses and distribution centers.

To enhance their efficiency, more and more black-marketers are using high-tech solutions to escape detection and reduce labor costs. Case in point: earlier this year, the New York district attorney's

office raided an illicit sportswear factory. Instead of finding illegal immigrants sewing labels onto sweatshirts, they discovered a complex network of computerized embroidery and silk-screening machines. The embroidery machines were valued at about \$100,000 apiece, the silk-screening machines at about \$25,000. The cost of such advanced technology is one reason once-independent counterfeiters have sought access to the deep pockets of organized crime.

The counterfeiters at the sportswear factory used an electronic scanner to read the designs of the emblems, labels, and tags on authentic pieces of clothing. The scanner converted that information into digital code. That code was sent to a computerized embroidering machine, which churned out the labels for the final counterfeit product.

Digital technology allows counterfeiters to store a wide array of designer names, logos, and insignia in a central computer, to be used on demand. Dempster Leach, a New York private detective known as the "godfather" of so-called intellectual-property investigations, says that with the harsh New York counterfeiting laws now in place, high-tech counterfeiters are beginning

to move their operations to New England.

"You're going to see an expansion of counterfeiting as a result of that in your area, and you'll also see local factories opening up to do that kind of work," Leach says. "As long as there is no local enforcement, they're going to disperse their operations to Boston and other areas."

**Hard to detect**

Such advanced techniques often make counterfeiters and the real McCoy indistinguishable to the untrained eye. In the past, poor stitching, misplaced labels, shoddy workmanship, and misspelled words were easy clues. But the increasing expense of black-market craftsmanship is changing that. Private investigators and law-enforcement officials must now routinely consult with company designers and engineers to examine, test, and sometimes disassemble goods believed to be bogus.

"People say that if you steal, say, a Polo horse (logo), it's just a trademark violation. But what it really is is corporate espionage — they're bypassing all the research, development, and marketing money that a trademark-holder invests," says John Quirk, a former CIA agent and president of the Florida-based International Research Group (IRG). IRG is an international corporate-intelligence service specializing in, among other things, anti-counterfeiting cases. Johnson & Johnson, the US Surgical Corporation, Yves Saint Laurent, and the Walt Disney Corporation are among its clients.

Though high-tech piracy has allowed some counterfeiting operations to outgrow the notorious three-shift, black-market sweatshops, it has by no means supplanted them. Indeed, they're still thriving. And with the doors to international trade open wider than they have ever been, Quirk says, sweatshops will continue to thrive.

That's why IRG uses the likes of former KGB, Scotland Yard, and FBI agents to conduct field investigations for its clients. "Ninety percent of our intelligence work is abroad," says Quirk.

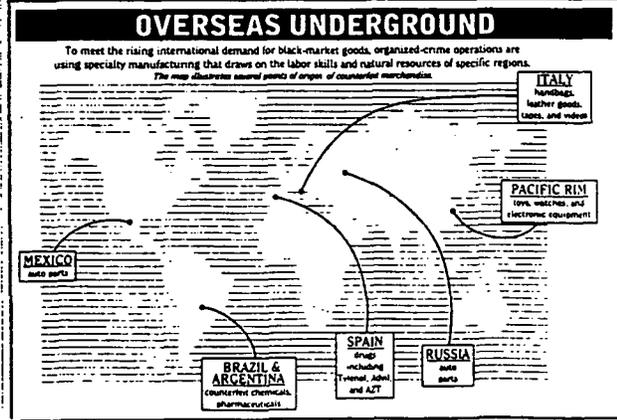
There is a reason for that. Counterfeit operations are meeting the rising international demand for black-market goods by using specialty manufacturing that draws upon the labor skills and natural resources of certain regions. For instance:

- Spanish auto parts often come from Mexico and countries in the former Eastern Bloc.

- Spain is known for its counterfeit pharmaceuticals, from Tylenol and Aspirin to quinine and AZT.

- Products made of plastics and polymers, such as truck brake linings, are

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## Piracy

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manufactured in the Far East.

• Fake handbags, leather goods, and perfumes are made in Italy, as are Mafia-commissioned bootleg tapes and videos.

• Hong Kong is renowned for counterfeit garments, toys, and electronic equipment.

• Counterfeiters in China copy a wide range of goods, from multi-volume encyclopedias to computer software.

• Other Pacific Rim countries, such as Singapore and Thailand, export fake designer apparel and watches.

• Loose patent laws in Argentina and Brazil allow makers of counterfeit pharmaceuticals and chemicals to flourish.

Developing manufacturing niches has allowed different elements of the underworld to claim their own territories peacefully. "They're becoming richer and stronger," Quirk says. "It's almost like some of the drug cartels. That's the way it's moving. There are cartels of counterfeiters being created."

And like the drug cartels, counterfeiters are evading the law by covertly fronting the money to manufacture the products, then shipping them in bulk to independent regional distributors. They, in turn, sell to

small-time dealers — like Massachusetts' own Lynda Roles — who often have little knowledge of the original suppliers and their intricate underworld networks.

### 'Fehelless fakas'

Her business card says it all: **FABULOUS FALES** — "ONLY YOUR BAG LADY KNOWS FOR SURE." And for years, the woman who calls herself Lynda Roles has been selling phony designer handbags, clothing, watches, and jewelry to the upscale suburbanites who live in quiet Hanover and its surrounding communities. Lynda Roles's small shop, located in a renovated Victorian house, is known to the outside world by a small sign on the door that reads **FINE ACCESSORIES**.

But those who have done business with Lynda Roles (who took her last name from her first counterfeit product) know that sign is as deceptive as the merchandise inside her shop. In the store's cramped quarters, reproductions of \$195 Gucci watches sell for \$35, or \$50 and a one-year guarantee. Imitation \$4000 Rolex watches go for \$125. Handbags bearing a fake Louis Vuitton leather label fetch \$35, not the \$350 an authorized dealer might charge.

Roles, a well-dressed woman who appears to be in her 40s, sold a Phoenix reporter posing as a woman-of-counterfeit-goods street vendor that her 14-year-old

business is prospering. It's doing so well, she boasts, that she now has a waiting list of about 2000 customers who are eagerly awaiting of new merchandise.

So far, despite the public promotion of luxury goods that she readily acknowledges are, indeed, "fals," she's had no brushes with the law. But with recent seizures of counterfeit stock in the Boston area, she and a tightly knit group of retailers with whom she associates have been taking fewer chances, she says. Selling goods like hers, she acknowledges, is in the least "gray area."

"You could be the police," she laughs nervously. "How would I know?" Roles and her associates have agreed not to divulge the identities of their wholesalers to anyone they don't know well. Roles does say, though, that she goes on buying trips to California and Nevada. Since the new felony laws were implemented in New York, she notes, it's become increasingly difficult to make such buys there: New York wholesalers are also wary of unknown buyers.

But it's not federal law-enforcement officials who worry Roles and merchants like her. And for good reason. Between October 1993 and September 1994, the US Customs Service's Boston-area branch seized only \$51,000 worth of counterfeit merchandise being smuggled into New England ports. (Items seized included team-logo baseball caps, garment bags, Rolex watches, inflatable Denver dolls, and automobile gear-shift knobs.) No arrests were made, says Customs spokesman Patrick O'Malley. Occasionally, last year Customs seized a total of \$4.5 million worth of fake goods — a tiny fraction of the total value of counterfeit goods that enter the US every year.

And if border control seems inadequate, pursuit of inland counterfeit traffickers isn't much better.

Inland trade is the US attorneys' business. The federal Trademark and Counterfeiting Act imposes criminal penalties of up to \$250,000 and/or five years in prison for individuals caught violating the law. But prosecutors under that law are too few to serve as a deterrent, analysts say.

The Boston US attorney's office, swamped with drug-trafficking and white-collar-crime cases, is a good example. Asked for a list of convictions, the office provided the Phoenix with the names of only two men operating out of Denver. Both were charged with placing the Digital trademark on shipments of refurbished computers destined for Iran. The men pleaded guilty to trademark violations this year and received \$3000 fines. They were also sentenced to probation and community service.

(Recognizing counterfeit operations as an international problem in which foreign countries are often complicit, drafters of the General Agreement on Tariffs and Trade, known as GATT, are attempting to address this issue. It stands, the agreement would require member nations to crack down on patent and copyright infringings.)

When it comes to getting caught, of greater concern to the Lynda Roleses of the world are the companies whose merchandise is being copied. With state and federal resources lacking, federal law now empowers those companies to hire investigative agencies and off-duty law-enforcement officials to make police-style raids, technically known as *ex parte* seizures. All they need is a court order signed by a federal judge.

Like the raids, investigations by agencies such as Omnicquest and TRC frequently resemble covert police operations. And, as with drug investigations, they often start with small dealers who lead detectives to large-scale suppliers. But breaking into the secretive, high-stakes world of counterfeit merchandise is a difficult task that requires patience, ingenuity, and gall.

### Elaborate stings

One of the most common and effective ways to make the necessary underworld contacts is through sting operations — in which corporate-hired investigators set up dummy companies, complete with stationery, business cards, phone lines, and office space — to lend credibility to what they call "pretexes," or fabricated cover stories. And it's here, says Quirk, that his CIA background comes in handy. "We wage economic warfare against the source," he says. "That's the most effective way. There is a guy in Boston we nailed not long ago by making contact under pretexes."

Reluctant to give the details of the Boston case without his client's approval, Quirk describes a common modus operandi.

"We make contacts and at first order small amounts to win their trust. Then we actually go ahead and order thousands of units. It hurts them financially because they borrowed the money from the bank — sometimes millions of dollars — or put out a lot of their own money. We make them pay for it all, and in the end we either seize the goods or have them arrested. And that's the only way to put them out of business."

Of course, working this way has its risks. Though agencies sometimes hire off-duty state police or federal marshals to show authority and force, oftentimes they go it alone, guns drawn. Either way, corporate-hired investigators have chiding war stories.

Leach, for instance, had a \$10,000 bounty put on his head (he says he was insulted by the price tag) after his firm seized a large shipment of counterfeit watches from the notoriously violent New York Vauxsams street gang Born To Kill. He can't remember if that was before or after the time he had a Molotov cocktail lobbed at him during another raid. Other investigators have been shot at; one was attacked with an ice pick.

Barry, who has worked with Leach on several joint actions for corporate clients, says he'd be concerned if he weren't getting such a response from his targets.

"You're fucking dead?" I hear that in my sleep," he says. "The amount of death threats you get are directly proportionate to how good an investigator you are. If you can manage to get yourself fire-bombed, you have truly arrived."

## WATCHING THE DETECTIVES

Though counterfeiters appear to be only one aspect of a black-market industry that cuts across every segment of American life, it's the easiest to detect — that is, with the proper training. The advent of computer scanners that digitally copy name-brand logos and insignias is making it increasingly difficult to distinguish counterfeit merchandise from the real thing. But, for the most part, black marketers continue to rely on cheap labor from developing countries to manufacture pirated products. And because of that, there are still ways to spot bogus goods.

Shoddy stitching, misspelled words on items of packaging, and misplaced or mismatched labels are all clues to counterfeiters. Unusual counterfeits, such as "Not for sale in United States, Canada or Mexico," are another indicator.

Industry analysts say a merchant's location is another tip. Flea markets, street vendors, and the latest practices — invitation-only house parties in the Avon and Tupperware tradition — are all signs that the apparel being sold may be spurious.

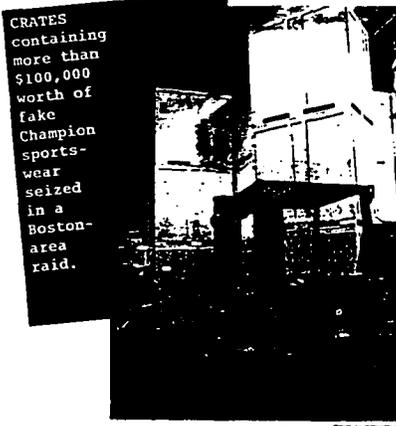
"People selling them at those type of places pass them off as seconds from a factory, and that's not true," says Veronica Hedy, vice-president and legal counsel for the luxury-apparel manufacturer Chanel, which is waging an aggressive campaign against counterfeiters. Hedy notes that many products, such as Chanel's, are licensed to be sold only in free-standing boutiques and selected department stores.

Without knowledge of what proper logo placement or quality fabrics are, perhaps the simplest way to recognize a knock-off is its price. The oft-repeated anti-counterfeit mantra is this: If it looks too good to be true, it probably is.

The following are examples of over-the-counter versus black-market prices:

Item	True price	Counterfeit price
Louis Vuitton handbag	\$390	\$30-\$60
Gucci tie	\$150	\$10
Chanel belt	\$1000	\$100
Rolex watch	\$4000	\$125
Levi's 501 jeans	\$60	\$25
Polo Ralph Lauren pique shirt	\$35	\$25
Moscow music tapes	\$10	\$3-\$5
Roy Ben sunglasses	\$75-\$200	\$15

— Tim Sandier





## INTERNATIONAL

land crime groups are conspiring in the "business of corruption and making money" by any means regardless of morals.<sup>17</sup> According to Mr. Moody, the United States is "going to level a continental campaign of organized crime coming out of the United States and out of China," causing "the death of our industrial property rights... to increase dramatically."<sup>18</sup>

**Physical Injury**  
With organized crime rings increasing their presence in the United States and abroad through their counterfeiting activities, injury resulting from bogus merchandise is no longer restricted to economic damage.

Consumers, retailers and customers are subjected to various risks because organized crime has advanced from counterfeit apparel to more intricate products such as food, pharmaceuticals, computer software and machine parts.<sup>19</sup> In 1981, the distribution of more than 1 million counterfeit birth control pills resulted in "reversed pregnancies and neonatal bleeding."<sup>20</sup>

Unfortunately, from the mid-1980s to present, counterfeiters have increasingly manufactured and distributed products that have resulted in fatal injuries. Counterfeiters have placed caps in oil filters instead of proper filtration products and used brakes with "compressed" air hoses... you could easily get your thumb through."<sup>21</sup>

In 1984, Congress promulgated criminal penalties for counterfeiters after recognizing that fatal injuries from helicopter crashes were due to the failure of counterfeit parts.<sup>22</sup> Nevertheless, three years later, a helicopter crash killed a reporter who was doing a live broadcast, and federal agents later revealed that more than 600 United States and NATO helicopters were equipped with counterfeit parts.<sup>23</sup>

In 1997, a Norwegian plane crash killing 55 people was reportedly a result of substandard counterfeit bolts.<sup>24</sup> In February, a court concluded that Chinese men had distributed counterfeit airplane parts to commercial airlines and the Department of Defense.<sup>25</sup> In 1990, the General Accounting Office reported that counterfeit parts were used to build 72 of the 112 nuclear power plants in the United States with bogus parts being found in some plants' emergency shutdown systems.<sup>26</sup>

In addition, Congress advised in 1984 that counterfeiters believe bogus drugs have been fatal and that counterfeit heart pumps had been sold to more than 200 hospitals.<sup>27</sup> The World Health Organization recently reported that counterfeit medicine constitutes 5 percent of the world's pharmaceutical market.<sup>28</sup> An economic industry official in France stated that the majority of counterfeit drugs are attributable to organized crime.<sup>29</sup>

Approximately 70 percent of the drugs distributed in Third World countries are counterfeit and have killed many recipients, including 600 people from 1990 to 1993.<sup>30</sup> Trade are the most numerous purveyors of counterfeit pharmaceuticals, including prescription drugs and antibiotics.<sup>31</sup>

Authorities recently discovered counterfeit Similan, a baby formula, in Northern California laboratory grocery stores and on tractor trailers in Kentucky. After this revelation, the Federal Food and Drug Administration issued an alert on April 6, 1995, warning consumers that counterfeit Similan had also been found in retail stores in 15 additional states and may be located in other areas.<sup>32</sup> This widespread problem indicates the involvement of a large national if not international counterfeiting group.<sup>33</sup>

**Recommended Measures**  
In 1984, the United States Senate recognized that counterfeiting had become an "epidemic."<sup>34</sup> Then, Congress amended the Leahy Act with the Trademark Counterfeiting Act of 1984 creating criminal penalties for counterfeiters.<sup>35</sup> In

1994, Congress increased the maximum fine under Sec. 2320 against individuals from \$250,000 to \$2 million and fine against an entity from \$1 million to \$5 million.<sup>36</sup>

In addition, the 1994 amendments increased the maximum prison sentence for individuals from five to 10 years.<sup>37</sup> Under Sec. 2320, the courts may fine several offenders \$5 million and imprison them for 30 years, and, if not an individual, fine up to \$15 million.<sup>38</sup>

These laws, however, specifically have additional counterfeiting, with some of them labeling the crime as a felony if counterfeiters are manufacturing, selling or possessing more than 1,000 articles at the place of sale in California, they are subject to a maximum fine of \$250,000 and imprisonment for no more than 3 years, if an individual, and fined a maximum of \$200,000, if a corporation.<sup>39</sup> The

### Counterfeiters have increasingly manufactured and distributed products that have resulted in fatal injuries.

California law also provides for significant penalties if the counterfeit product results in deaths.<sup>40</sup>

In New York, a repeat counterfeit offender or a counterfeiter whose goods exceed \$1,000 in value is charged with a felony and subject to imprisonment for not more than one year.<sup>41</sup> By contrast, in South Carolina, counterfeiters gather only a misdemeanor with fines not more than \$3,000 and up to one year jail sentence for individuals and a maximum fine for corporations of \$20,000.<sup>42</sup> One counterfeiter stated that the new felony law in New York has made counterfeit buyers from wholesalers in New York City difficult, as she travels to other states.<sup>43</sup>

### No Significant Threat

Thus, the criminal penalties in the Federal law and the lack of legislation in

most states pose no significant threat to organized crime in the United States. As noted by the IACC's Managing Director, Robert Cohen, "Right now, it's a cross that for many does pay."<sup>44</sup>

The IACC has proposed an amendment to the Trademark Counterfeiting Act of 1984 to help thwart counterfeiters, thus reducing the emergence of organized crime. The proposed bill would, among other things, amend the Ratchford Infringement and Carriage Organization Act<sup>45</sup> by amending Sec. 2320 and other counterfeiting matters as "predicate acts."<sup>46</sup>

Other concerns are also discovering that current law no longer matches the activities of today's sophisticated counterfeiters. In Manchester, a trader known to have links with organized crime was caught with Pounds 60,000 of counterfeit clothes, yet he only received a Pounds 10,000 fine and on 18 month suspended sentence.<sup>47</sup>

Prosecutors historically refused from pursuing criminal prosecutions, be-

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## INTERNATIONAL

# Organized Crime Enters The Counterfeiting Ring

["CRIME" FROM PAGE C31] cause they attributed little weight to the crime of counterfeiting. In addition, customs agents have viewed the cumbersome task of enforcing counterfeiting laws as dull and unglamorous.<sup>12</sup>

A House Subcommittee report in 1984 had warned that "organized crime families" (were) beginning to muscle in on the trademark-counterfeiting racket<sup>13</sup> and demanded "direct and forceful action."<sup>14</sup> A U.S. congressman was concerned that the "list of counterfeits is endless and one can only imagine what will turn up next on the list."<sup>15</sup>

Yet, in 1984, the U.S. Department of Justice's focus was on illegal drug trafficking and organized crime, so the Justice Department said that "no one should expect that we are going to initiate hundreds of cases" under the Trademark Counterfeiting Act of 1984.<sup>16</sup> In 1993, organized crime's control the counterfeit goods trade and its capabilities in manufacturing and distributing has been well-documented.<sup>17</sup>

The serious risks posed to public health and safety requires that consumers be protected from purchasing counterfeit products, that the United States Congress and state legislators enact strict statutes and that federal agencies closely monitor international trade to deter the involvement of organized crime in counterfeiting.

## Prosecutors view counterfeiting laws as dull and often refrain from pursuing criminal indictments for violations.

Acting in 1991 to Pack-Hotel and Travel The City's Pringles-Canal Street, Justice Neagles, Jerry Clay, Senior Trademark's Person On Behalf of Baker, Charles, Charles, Venetian, Robert, Larson, Carl, and Louis Vuitton, He's Got Cash, A Hugo Bossman, a Master in Psychology and a Lead for Fresh Justice, and the American Way, New York Magazine, March 4, 1993, at 37.

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# Tracking BOGUS Goods



Champion clothing labels confiscated by investigators.

THE PATRIOT LEDGER, SAT./SUN., APRIL 8/9, 1995

## Fakes abound, enforcement spotty

By Neil Porter Brown  
The Patriot Ledger

**UP** to his shoulders in trash, private investigator Marc Barry wades through a dumpster at 1:30 a.m. on a cold February night.

An old tuna fish sandwich, cigarette butts and coffee grounds lie atop dozens of plastic bags bloated with stale garbage. Fat rats scatter. Barry's flashlight beam flits over the mounds as he moves ahead slowly, his legs sinking at every step into the slippiness of refuse.

He's dressed in a thick black jumpsuit, clutching a box of Zip-loc bags and stickers marked "Evidence."

Barry has closed the dumpster lid to guard against freezing and the suspicions of local police who cruise through parking lots on the graveyard shift.

"The wind is whipping outside and you're just feeling miserable," Barry recalls, then quips, "At times like that, it's nice to know the lawyer you work for is home with a snifter of brandy smoking a cigar in his den."

In the fetid dumpster, it's not the bloody glove he's after. What Barry wants is far more elusive.

Order forms, shipping labels, shirt neck tags, embroidery thread, designer labels — those are the tiny bits of the puzzle he needs to prove in court that the guys he's tracked for months around the South Shore are big players trading in counterfeit merchandise.

"These are not like rag peddlers standing on the corners," Barry said of his Massachusetts-based targets. "We've got whole groups here working in collusion and they're



Fred Fiad photo/The Patriot Ledger

An undercover agent from Omniquest International Investigative services of Quincy displays seized goods.

Please see FAKES — Page 36

## FAKES

Continued from Page 29

making millions and millions of dollars."

An investigator for eight years, Barry and his business partner, William O'Brien, a 35-year veteran of the Boston Police, own Omniquist International Inc. in Quincy.

"These days, the company leads the way in tracking bogus goods throughout New England.

In the last year alone, Barry has raided about 20 warehouses and seized more than \$1 million worth of counterfeit merchandise in Hallowbrook, Brockton, Stoughton, Randolph, Plymouth and other New England locations.

His corporate clients include Champion, Polo, Guess, Ray Ban, Oakley, Borden and Warner Bros. Some counterfeit clothing is produced locally, but most of his local targets are distributors of counterfeit goods made elsewhere.

Barry's legwork has yielded 18 still-pending civil lawsuits. At least a dozen others have been settled in recent years, mostly in favor of the plaintiffs, court documents show.

In one case stemming from a January raid, defendants Burt Kaufman of Harnmouth and Richard S. Cardillo of Plymouth are accused of using the Borden brand name to try to sell 15,000 blocks of Almond Bark, a fudge-like confection, U.S. District Court records show. The two men also allegedly bought and sold fake Champion sweatshirts and T-shirts, according to the documents.

Last week, the U.S. Attorney's Office followed up by indicting the two men on federal product-counterfeiting charges. A third Omniquist target, Robert Mackedon, was also indicted for distributing \$400,000 worth of counterfeit Champion goods from his Brockton storefront.

South of Boston and across New England, fake sunglasses, Gucci bags, Power Rangers and designer jeans are sold by street vendors and at flea markets, discount stores and house parties, Barry said.

That trade is brisk and on the rise, Barry said.

But in size, the network is no match for its international counterparts who are busily feeding a multi-billion-dollar industry, experts say.

The newest — and by far the most organized and profitable counterfeiters' to date — manufacture phony parts for cars and airplanes, high-grade office supplies, pharmaceuticals, machinery, and a range of consumer products.

"The computer industry alone is losing \$12 billion a year, said Ephraim Cohen, managing director of the International Anti-Counterfeiting Coalition in Washington, D.C.

"Counterfeit products are exploding because of weak laws and low penalties," Cohen said. "There aren't too many things left that aren't reproduced."

Recent counterfeit cases in California point to an increase in health and safety risks.

Three California men went to federal prison for scheming to sell bogus airplane parts to the airline industry and the U.S. Defense Department.

In February, fake cans of powder bearing the name Similac — a popular infant formula — were seized on supermarket shelves in northern California.

Up to one-third of the fraudulent merchandise manufactured overseas comes to the United States, arriving by ship or plane and easily eluding U.S. Customs officials who focus first on illicit drugs.

Gauging the scope of the counterfeit trade is nearly impossible. Corporate losses to counterfeiters were estimated at \$61 billion to \$90 billion



Fred Field/The Patriot Ledger

In one case stemming from a January raid, defendants Burt Kaufman of Harnmouth and Richard S. Cardillo of Plymouth are accused of using the Borden brand name to try to sell 15,000 blocks of Almond Bark, a fudge-like confection, U.S. District Court records show.

Counterfeit products are exploding because of weak laws and low penalties. There aren't too many things left that aren't reproduced.

— Ephraim Cohen, managing director of the International Anti-Counterfeiting Coalition in Washington, D.C.

in a 1988 report by the U.S. International Trade Commission. The government has not compiled statistics on counterfeiting since then.

Today the losses from counterfeiting total close to \$200 billion, according to Cohen. His group is a 164-member trade association that tracks the counterfeit business and lobbies for stronger laws.

Counterfeiters bruise the bottom line, tarnish a Madison Avenue image, and steal an abstraction: intellectual property.

Those ideas and technologies, when protected, are the seeds of enterprise, Barry said.

"If you lose intellectual property, you might as well throw everything else out the window," Barry said. "Because then it's all gone to hell."

But not everyone agrees. Bargain hunters who like brand names may not care if the stuff is fake.

One local businessman said "obscene" corporate mark-ups on products like sneakers and designer clothes almost justify copy cats who at least give consumers a break.

stores, said he doesn't sell counterfeit goods. But he understands why some businesses do.

"It's hard to draw the line," he said. "Why should someone be able to get \$100 profit from a product that costs them \$1 to make?"

"It may be legal, but is it moral?" he said.

University of Connecticut professor Subhash C. Jain specializes in international business and intellectual property rights.

Americans love to buy things, especially name brands, Jain said.

"More means success in American society," Jain said. "And it is a liberal market. We are really a truly free-trade country. So it is very attractive to counterfeiters."

The bulk of the knock-offs come from China, Taiwan, Korea and other Asian countries where labor is cheaper and laws are more lax, Jain said. But competition is rising in other countries.

Bogus computer products are made in eastern Europe, Germany, and other Western nations, Jain said.

They don't go in for cheapie things," he said. "They are competing in the high-end market, with counterfeit products that are really good."

Combating counterfeiting overseas is a daunting challenge for U.S. companies but, even in the United States, bringing manufacturers and distributors of bogus goods to justice is difficult, lawyers said.

Police have their hands full with drug dealers, murderers and solving other violent crimes. Even the FBI and U.S. Customs in the Northeast region do not have the resources it takes to hunt down counterfeiters. In Boston, U.S. Customs agents inspect only about 8 percent of all shipments.

Last year, Boston-based customs officials confiscated \$50,967 worth of counterfeit goods, including inflatable Minnie Mouse dolls, Rolex watches, baseball caps and car gear shift knobs, according to agency reports.

In the same period, they seized more than \$17 million worth of cocaine, hashish and what a popular cocaine, the drug from East Africa, and other narcotics, records say.

They are caught in a cycle

## Property rights hard to enforce

**F**or years, efforts to stop counterfeiting of merchandise abroad have produced mixed results.

Enforcing United States' standards, trademarks and patents in countries with their own sets of laws is complicated, unless both countries have signed a trade pact that sets the ground rules.

Political factors add further complications, said University of Connecticut Professor Subhash C. Jain, who specializes in international property rights.

"It's difficult for a government to get involved unless it's a big issue," he said. "It depends on the political importance of the country and the industry."

Virtually no phony pharmaceuticals are sold in the United States, he said, partly because "the industry has a very powerful lobby in Washington."

But bogus medicine is readily available in many third-world countries, Jain said.

The most recent example of United States intervention was in China in February. U.S. Trade Representative Mickey Kantor threatened United States imposition of 100 percent tariffs on over \$1 billion worth of Chinese exports unless the Chinese government cracked down on the counterfeiting of American goods.

A trade war was averted at the last minute when the two countries signed a pact to stamp out

infringers and enforce protections.

Many corporations avoid the web of such high-profile politics and take matters into their own hands. The lure of foreign investments, Jain said, often provides leverage in nations that are eagerly seeking to develop, as Singapore is.

Reebok International Ltd., in Stoughton, has agents in the Far East working to stamp out the flow of fake Reebok products, such as sneakers, said the firm's general counsel, Mary Ann Alford.

In the early 1980s, Korea was producing about 95 percent of counterfeit Reebok products, Alford said. "We're talking millions and millions of sneakers."

Since then production of counterfeit Reebok goods has centered in China and Russia. In the last nine months alone, Chinese officials raided 47 factories suspected of making Reebok gear, Alford said.

"The secret there, as in anywhere, is we work very closely with the government," she said. "We investigate the cases fully, then turn the information over to them and say, 'Here's what you need to prosecute.'"

Bogus Reebok sneakers have also been traced to smaller factories in Mexico, Brazil, Taiwan, Italy, Vietnam and Indonesia, she said.

feiners often face weak punishments, some lawyers say.

The federal Trademark Counterfeiting Act of 1984 prohibits anyone from intentionally trafficking in goods and services using a counterfeit mark. But in the last several years, the U.S. Attorney's Office in Boston has rarely used that power to prosecute offenders here.

In most states, product-counterfeiting crimes and forgery are considered misdemeanors, punishable by fines ranging from \$500 to \$2,000. Some counterfeiting crimes are felonies in New York, Wyoming, Alabama and Arizona.

Massachusetts is among eight states with no law making product counterfeiting a criminal offense. So the vast majority of those cases are fought through the civil courts.

It's an arduous process, some lawyers contend. Boston attorney Mark Schonfeld is litigating the Borden case and dozens of others.

Judges are not quick to hand out civil search warrants, which Barry needs to seize suspected counterfeit goods as "evidence," said Schonfeld, of the law firm Sharbounce, Powers & Needham, P.C.

Cases can drag on and penalties are sometimes capped by trademark and copyright infringement laws, he said.

"You try to hit them where they hurt — if you can find their assets," Schonfeld said.

Meanwhile, as the lawyers haggle in court, the defendants keep working. Counterfeiters generally make and sell more than one product line and their operations are relatively mobile, Barry said.

"So, in the three or four months it took me to get a guy, he's already made the amount in the suit four times over," Barry said. "It's really frustrating."

Under federal counterfeiting laws, a person Barry is after could go to prison for five years or be fined a maximum of \$250,000.

But prior to last week's indictments, the U.S. Attorney's Office in Boston had handled only one counterfeiting case in the last 18 months, according to Assistant U.S. Attorney Mark Pearlstein, chief of the economic crimes division.

In that case, two Danvers men pleaded guilty to illegally using the Digital trademark on computers destined for Iran. They were fined \$5,000, put on probation and ordered to perform community service, Pearlstein said.

"We're well aware of the growing problem of counterfeit products in Massachusetts and nationwide," Pearlstein said. "So we really are committed, in appropriate circumstances, to using the federal statute criminally."

When asked what the scope of the problem is around the state, Pearlstein said he does not have specifics.

"What I base this on is the same type of media reports you see," he said. "We do have the perception that this has grown in recent years. These sorts of schemes can pose a threat to legitimate companies."

It is practically impossible to say how much counterfeit material passes undetected, said Jerome Guerrin, U.S. Customs supervisor of the fraud unit.

"If we can spot a shipment and develop information about a shipment, then we can examine it," he said. "You know the operative word there is 'if.' With the limited manpower, we can't examine everything. Counterfeit goods is about one of 300 laws we're supposed to enforce."

Counterfeiting "will continue to be a problem because there is a market for it," Guerrin said.

## AIR TRANSPORT

# Faulty, Bogus Part Evades Safety Net and Sparks Probe

JAMES OTT/WASHINGTON

Federal criminal investigators are probing how a defective, unapproved part was installed in a Pratt & Whitney JT8D powerplant and became a shelf item in several engine overhaul shops.

The part, a 4-1/2 bearing seal spacer, probably is the first piece of engine hardware critical to flight safety that has slipped through safeguards set up by the airlines and regulated by the FAA.

A United Airlines mechanic found a counterfeit spacer during routine maintenance on a JT8D engine (AW&ST Dec. 16/23, 1991, p. 38). It was marked as a Pratt & Whitney part, but the surface was bronze-colored and it did not exhibit the shiny, machined, silver-toned look of the spacers produced under Pratt & Whitney authority.

The mechanic ran a Rockwell hardness test on the spacer and found it fell short of the C32-38 rating. Pratt & Whitney made further tests, called it a bogus product and alerted operators of the 14,000 JT8Ds around the world. The FAA followed with an airworthiness directive.

The FAA requires operators to perform a one-time check for bogus spacers unless

they can prove replacement parts were bought directly from Pratt & Whitney, the original equipment manufacturer (OEM) and only approved maker of the part.

The JT8D, the most commonly used transport engine, powers most Boeing 727s, 737-100s and -200s, and McDonnell Douglas DC-9s and MD-80s.

*Several JT8D operators reported they had found bogus spacers on spare-parts shelves*

Several JT8D operators reported they had found bogus spacers on spare-parts shelves, leading to the conclusion that other defective spacers may have entered airline service, according to John E. Golinski, JT8D program manager for the FAA's Aircraft Certification Service in Burlington, Mass.

The FAA airworthiness directive, issued Jan. 3, requires operators to report their findings, but it may be several weeks before documents are available.

At least six bogus spacers are in FAA custody, and each has undergone engineering analysis and evaluation. FAA officials at national headquarters here said the spacers represent a degree of sophistication in counterfeiting that the agency has not encountered before.

From the standpoint of function, however, the bogus spacer is a threat to flight safety. Agency officials have predicted "the unapproved spacers will result in rapid deterioration of the seal elements and that failure is anticipated to occur within 600 hr. time in service."

The No. 4-1/2 bearing seal spacer is described as a critical component in the bearing ring seal assembly. Engine operation with the unapproved spacer could result in failure of the No. 4-1/2 bearing and fracture of the low-pressure turbine shaft.

The criminal investigation, one of numerous bogus-parts inquiries under way, could deliver what the FAA has been seeking—positive evidence tracing the production to the point of manufacture (AW&ST Dec. 16/23, 1991, p. 36).

"The FAA can tell who is doing the selling, but it can't tell who is doing the manufacturing," David Rubin, technical director of the Comsis Corp. of Silver Spring, Md., said.

Rubin, principal author of a two-phase study for the FAA on the aviation parts aftermarket, said consequences of using the counterfeit spacer may be as serious as those of the bogus rotor bearing that Bell Helicopter Textron, Inc., of Ft. Worth found in its equipment during the 1980s.

The alert to the industry of the presence of the bogus spacer was accelerated by an AVAlert, a notice sent quickly to aviation-related organizations upon discovery of an unapproved part. The AVAlert system was developed by the Unapproved Parts Task Force set up by the Aerospace Industries Assn. with FAA participation.

Robert E. Robeson, Jr., AIA vice president for civil aviation, said the problem of bogus parts has persisted as the FAA and industry attempt to raise awareness of the issue. The FAA office monitoring reports of suspected unapproved parts counted 64 reports in a six-month period in 1991, the

## Industry Task Force Targets Stolen Parts

WASHINGTON

A proliferation of stolen aviation parts is prompting the formation of an international industry task force to examine ways of countering the trend.

The parts are being stolen from inventories of legitimate suppliers at airline shops, original equipment manufacturers (OEMs) or parts houses. The parts are airworthy, but their origin may not be verifiable.

Thomas Kelly, vice president of security for the Air Transport Assn. of America, said he did not doubt the existence of networks around the world that sell stolen aviation parts. The task force will examine programs to thwart thefts and fraudulent distribution of the illegal goods.

Members of the ATA and International Air Transport Assn., based in Montreal and Geneva, respectively, are joining to form the task force. □

1978	Aerospace Industries Assn. recommends that the FAA regulate parts distributors.
1980	FAA contracts for study by Comsis Corp., Silver Spring, Md.
1984	Comsis study recommends sanctions against distributors of unapproved parts.
1988	AIA seeks a new FAR 21.307 to tighten rules for sale and distribution of parts.
1989	FAA demurs, conceding the importance of the issue but pleading a lack of resources.
1990	AIA forms an Unapproved Parts Task Force, with FAA support.
1991	FAA issues advisory circulars on parts certification procedures.
Current	AIA to revise petition to amend FAR 21.307 to include distributors under FAA regulations.

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## AIR TRANSPORT

first year that they were centralized. Eleven of those have been dismissed.

The AIA had a running battle with the FAA through the 1980s to close gaps in the safeguard system, which the association contends lies with the unregulated parts distribution network. The FAA's Comsis report came to that conclusion in 1984 and reiterated it in 1988.

"The distributor network is so extensive, so unknown and so wide open that anybody can set up shop," Howard G. Aylesworth, Jr., AIA director of manufacturing and customer support, said.

Legitimate parts distributors and suppliers are concerned about the opening as well, Aylesworth said.

The AIA in 1988 asked the FAA to tighten the rules for sale and distribution of aviation parts. The agency placed the petition in the docket here, but it has not taken further action. FAA officials said other priorities have superseded the proposal, and the agency lacks resources to enforce the proposed change.

According to the association, there is a loophole in the regulations. Those that cover manufacture and installation of parts (FAR 21.303 and FAR 43.13, respectively) do not forbid the sale or distribution of unapproved parts and have hobbled the FAA from attempting to prosecute. The AIA is proposing revisions to the 1988 petition to place distributors under FAA regulations.

"Only through strengthening of the regulations to make it an offense and meting out stiff fines will the unapproved-parts problem be solved and the public be protected," Aylesworth said.

The association wants to authorize the FAA to inspect businesses without obtaining a search warrant and withdraw certification immediately if irregularities are found. U

## FAA Approval Process Backed as Means to Curb Bogus Aircraft Parts

ADDISON, TEX.

The president of Superior Air Parts, Inc., is studying the regional/commuter fleet for aircraft that fly 2,500 hr. a year, operate on short hops and use up parts like an overheating engine.

David Sisson wants to expand his 20-year-old parts-making business into the commercial airline sector, and he believes the active commuter fleet represents an opportunity for him.

The FAA probably will approve whatever part he chooses to produce, after extensive testing and design work. But to the original equipment manufacturer (OEM) of whatever Sisson may produce, his FAA-approved operation is anathema.

To the OEM, Superior is homing in on the \$7-billion annual aftermarket for U. S. aviation parts. The FAA permits companies to produce parts in competition with OEMs under a process called Parts Manufacturer Approval (PMA). It is a legitimate but sometimes controversial way for companies to meet high demand for fast-turnover aviation parts.

The original equipment manufacturers believe the FAA has permitted the right to competition to overwhelm the right to intellectual property, and a vast gulf separates PMA holders and OEMs on this issue.

Superior is an experienced and, according to FAA officials, a first-rate producer of parts. The company holds PMAs for approximately 1,000 products and reports revenues of \$40 million a year. The company's parts, produced by contractors, fit primarily into reciprocating engines. There is a growing business in small turbine parts, and Sisson sees a future in the busy commercial sector.

According to Sisson, his 100 employees at eight distribution centers in the U. S. fill 95% of their orders each day.

In the last month, Superior received FAA approval to manufacture cylinders for the Teledyne-Continental O-200 engine, the first PMA project since Sisson and Larry Shiemboh, vice president for business development, took over Superior as new management two years ago.

### NO LEGAL RECOURSE

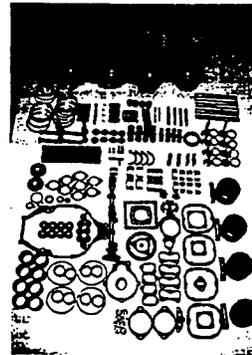
Continental has no legal recourse to this new development, and its officials do not want to talk about the new competition.

Sisson estimated there are 15,000 O-200 engines and hopes to sell the Superior-version cylinders at a lower price than what Continental charges. He said he can outperform the competition by providing quick service and improved parts.

Superior obtained 10 Continental O-



The O-200 cylinder commands the attention of Superior Air Parts engineers Peter Kayfus and Ray Scott and Larry Shiemboh, vice president for business development.



Superior has obtained PMA approval for many parts, some of which are shown above.

AVIATION WEEK: A SPACE "E" IN "C" COPY/January 20, 1992 33

## Rx drugs bought in Mexico pose new threat in U.S.

Just half an hour and \$1.50 by bright red trolley from San Diego, where the American Pharmaceutical Association recently completed its annual meeting, *las farmacias* of Tijuana are thriving. Increasing numbers of Americans are crossing into Mexico to buy prescription drugs there at a fraction of their U.S. price.

APhA has expressed concern that the free trade talks between Mexico and the United States may exacerbate a problem whose extent remains largely undefined.

El Paso pharmacist Barry Coleman and the Texas Pharmaceutical Association were successful in getting the APhA house of delegates to address the issue. As a new business item, the delegates adopted a resolution requesting that the board of trustees initiate a study "to address the differences of pharmacy practice and pharmaceutical care" between the two countries.

El Cajon pharmacist Jacob said that while on vacation in Mexico, his wife realized that she had left her Hygroton (chlorthalidone, Rhône Poulenc Rorer Pharmaceuticals) and Synthroid (levothyroxine, Boots Pharmaceuticals) at home. They found identically named drugs in a Mexican pharmacy, but they were totally different products, clearly without the same chemicals.

Another concern, noted Gary MacMullen, a pharmacist at Childrens Medical Center in San Diego, is the suspicion among more than a few border pharmacists that somehow Mexican-made drugs are winding up in U.S. pharmacies. They routinely show up in a variety of grocery and convenience stores in Hispanic neighborhoods in California and at flea market-like swap meets, where, as in Mexico, they can be pur-

chased cheaply and without a doctor's order.

**And by mail:** There are other indications, too, that cross-border traffic in Rx's isn't limited to those who can head south (or north—drugs are cheaper in Canada as well, although prescriptions are required there) to shop. Large-scale mail-order operations, including one with a Tijuana address, have attracted the attention of the Food & Drug Administration. The agency issued an import alert to field offices in January, directing them to seize Rx's mailed to U.S. customers by six foreign firms.

The drugs have been advertised in periodicals and through direct mail as foreign versions of approved drugs available at up to 60% off U.S. prices. "In some cases, the drugs are counterfeit, lacking any real similarity to the approved drug," said FDA chief David A. Kessler. "The uncertain character and quality of these drugs constitute an unreasonable risk to the public health."

The ads also claim FDA allows importation of "personal use" quantities of Rx drugs. FDA does have such a policy for up to three-month supplies, provided the drugs don't pose an unreasonable safety risk, aren't promoted in the



Tijuana has shed the lawdry sex show that beckoned to sailors to become a more conventional shopping mecca.

Joe Jacob, whose pharmacy is in nearby El Cajon, Calif., told *Drug Topics* the Tagamet (cimetidine, SmithKline Beecham Pharmaceuticals) he sells for \$65 to \$70 costs \$40 to \$45 in Tijuana. According to Morris Wolford of the Prescription Center in Beverly Hills, Rogaine (minoxidil, The Upjohn Co.)—costing \$60 to \$70 up north—can be bought for \$20 south of the border. **Questionable source:** Although many of the drugs are legitimate and manufactured by U.S. patentholders in Mexico, the origin of others is uncertain at best.

Jacob recalled having a 20-gm tube of Retin-A (tretinoin, Ortho Pharmaceutical) analyzed; a patient had purchased it in Mexico for \$2. Except for the ink color, the packaging was identical to the product he sold for \$20. But the Mexican version was a counterfeit containing only vitamin A cream.



The dozens of drugstores in Tijuana sell drugs with no prescriptions necessary at a fraction of their U.S. cost.

United States, and are for a condition for which there is no satisfactory treatment available here.

As a practical matter, most Americans bringing back much less than a trunkload of any Rx drugs seem unlikely to even be stopped by U.S. Customs. At the Tijuana-San Ysidro crossing especially, the check for tourists walking back to the San Diego trolley is cursory at best. The K-9 unit dogs sniff expectantly for the barest scent of cocaine, heroin, or marijuana. Like most visitors to *las farmacias*, they aren't trained to recognize cimetidine, minoxidil, or tretinoin.

Michael F. Conlan

## Did R.Ph. fulfill his duty? You be the judge

Call it the Case of the Lost Taste Buds. Judge Wapner would have had a field day with this one, but he wasn't available. So, in stepped pharmacist-attorney Kenneth Baker, who disposed of the case in record time—about two and a half hours.

When it was all over, observers agreed that "Judge" Baker had

presided over the trial with even-handed precision; however, there was some question about the clarity of the jury verdict. But I'm getting ahead of the story.

As mock trials go, it was one of the best. The actors who took part in it at the American Pharmaceutical Association's annual conven-

### Plaintiff Exhibit A

#### Community Pharmacy

127 Main St.  
Rhudy, New Gans 00123  
(555) 555-1234

Patient Profile  
of  
Donald Doe  
777 Appleby Dr.  
Rhudy, New Gans 00123

Date	Medication	Dr.	No.	R.Ph.	Amount	Remarks
					\$ 3.50	pt. says for arthritis
Feb. 2, 88	Hydrocortisone 10mg	TJ	#30	js	\$ 3.50	
Mar. 3, 88	Hydrocortisone 10mg	TJ	#30	tp	\$ 3.50	
Mar. 28, 88	Hydrocortisone 10mg	TJ	#30	js	\$ 6.25	meet adv. price— counseled how to use
Mar. 28, 88	OTC-Clinitest	TJ	#30	js		
					\$ 3.95	
Apr. 20, 88	Hydrocortisone 10mg	TJ	#30	tp	\$ 3.95	complained about \$
May 15, 88	Hydrocortisone 10mg	TJ	#30	tp	\$ 3.95	
June 12, 88	Hydrocortisone 10mg	TJ	#30	tp	\$12.95	
July 5, 88	Hydrocortisone 10mg	TJ	#100	js	\$12.95	
Sep. 20, 88	Hydrocortisone 10mg	TJ	#100	js	\$14.25	told pt. need new Rx
Dec 1, 88	Hydrocortisone 10mg	TJ	#100	tp	\$ 9.25	New sig.—see Rx note
Jan 10, 89	Hydrocortisone 10mg	TJ	# 50	js	\$14.25	
Feb 1, 89	Hydrocortisone 10mg	TJ	#100	js	\$14.95	
Mar. 25, 89	Hydrocortisone 10mg	TJ	#100	js	\$14.95	
May 22, 89	Hydrocortisone 10mg	TJ	#100	tp	\$14.95	
July 17, 89	Hydrocortisone 10mg	TJ	#100	js	\$32.00	
Aug.19, 89	Hydrocortisone 10mg	TJ	#300	js	\$34.00	Told pt. need new Rx
Nov.22, 89	Hydrocortisone 10mg	TJ	#300	tp	\$16.15	New Rx—see Rx note
Jan. 5, 90	Prednisone 10mg	TJ	#100	js		

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