

106TH CONGRESS
1ST SESSION

H. R. 2100

To amend the Trademark Act of 1946 to prohibit the unauthorized destruction, modification, or alteration of product identification codes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1999

Mr. GOODLATTE (for himself and Ms. LOFGREN) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To amend the Trademark Act of 1946 to prohibit the unauthorized destruction, modification, or alteration of product identification codes, 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 “Antitampering Act of
5 1999”.

6 **SEC. 2. PROHIBITION AGAINST UNAUTHORIZED ALTER-**
7 **ATION OF PRODUCT IDENTIFICATION CODES.**

8 (a) IN GENERAL.—Title VIII of the Act entitled “An
9 Act to provide for the registration and protection of trade-

1 marks used in commerce, to carry out the provisions of
2 certain international conventions, and for other pur-
3 poses.”, approved July 5, 1946 (commonly referred to as
4 the “Lanham Act” and the “Trademark Act of 1946”)
5 is amended by inserting after section 43 (15 U.S.C. 1125)
6 the following:

7 “UNAUTHORIZED MODIFICATIONS OF PRODUCT
8 IDENTIFICATION CODES

9 “SEC. 43A. (a) DEFINITIONS.—In this section—

10 “(1) the term ‘consumer’—

11 “(A) means—

12 “(i) the ultimate user or purchaser of
13 a good; or

14 “(ii) any hotel, restaurant, or other
15 provider of services that must remove or
16 alter the container, label, or packaging of
17 a good in order to make the good available
18 to the ultimate user or purchaser; and

19 “(B) does not include any retailer or other
20 distributor who acquires a good for resale;

21 “(2) the term ‘good’ means any article, product,
22 or commodity that is customarily produced or dis-
23 tributed for sale, rental, or licensing in interstate or
24 foreign commerce, and any container, packaging,
25 label, or component thereof, but does not include
26 any article of clothing;

1 “(3) the term ‘manufacturer’ includes the origi-
2 nal manufacturer of a good and a duly appointed
3 agent or representative of that manufacturer acting
4 within the scope of its agency or representation;

5 “(4) the term ‘product identification code’—

6 “(A) includes any number, letter, symbol,
7 marking, date (including an expiration date),
8 code, software, or other technology that is af-
9 fixed to or embedded in any good, by which the
10 manufacturer of the good may trace the good
11 back to a particular production lot or batch or
12 date of removal, or otherwise identify the date
13 of manufacture, the date of expiration, or other
14 comparable critical data; and

15 “(B) does not include copyright manage-
16 ment information conveyed in connection with
17 copies or phonorecords of a copyrighted work or
18 any performance or display of a copyrighted
19 work;

20 “(5) the term ‘Universal Product Code’ refers
21 to the multidigit bar code and number representing
22 goods in retail applications; and

23 “(6) the term ‘value’ means the face, par, or
24 market value, whichever is the greatest.

1 “(b) PROHIBITED ACTS.—Except as otherwise au-
2 thORIZED by Federal law, it shall be unlawful for any per-
3 son, other than the consumer or the manufacturer of a
4 good, knowingly and without authorization of the
5 manufacturer—

6 “(1) to directly or indirectly alter, conceal, re-
7 move, obliterate, deface, strip, or peel any product
8 identification code affixed to or embedded in that
9 good;

10 “(2) to directly or indirectly affix or embed a
11 product identification code to or in that good which
12 is intended by the manufacturer for a different good,
13 such that the code no longer accurately identifies the
14 source of the good;

15 “(3) to directly or indirectly affix to or embed
16 in that good any number, letter, symbol, marking,
17 date, code, or other technology intended to simulate
18 a product identification code; or

19 “(4) to import, reimport, export, sell, distribute,
20 or broker that good, in a case in which the person
21 knows that the product identification code has been
22 altered, concealed, removed, obliterated, defaced,
23 stripped, peeled, affixed, or embedded in violation of
24 paragraph (1) or (2), or in a case in which the per-
25 son knows that the good bears an unauthorized

1 number, letter, symbol, marking, date, or other code
2 in violation of paragraph (3).

3 “(c) APPLICABILITY.—The prohibitions set forth in
4 subsection (b) shall apply to product identification codes
5 (or simulated product identification codes in a case to
6 which subsection (b)(3) applies) affixed to, or embedded
7 in, any good held for sale or distribution in interstate or
8 foreign commerce or after shipment therein.

9 “(d) EXCLUSION.—

10 “(1) UPC CODES.—Nothing in this section pro-
11 hibits a retailer or distributor from affixing a Uni-
12 versal Product Code or other legitimate pricing or
13 inventory code or information required by State or
14 Federal Law if such code or information does not
15 (or can be removed so as not to) permanently alter,
16 conceal, remove, obliterate, deface, strip, or peel any
17 product identification code.

18 “(2) REPACKAGING FOR RESALE.—(A) Nothing
19 in this section prohibits a distributor from removing
20 an article, product, or commodity of retail sale from
21 a shipping container and placing such article, prod-
22 uct, or commodity in another shipping container for
23 purpose of resale in a quantity different from the
24 quantity originally provided by the manufacturer or
25 from replacing a damaged shipping container, if, ex-

1 cept as provided in paragraph (1), such article,
2 product, or commodity of retail sale retains its origi-
3 nal product identification code, without any obstruc-
4 tion or alteration, and if—

5 “(i) such distributor is registered with all
6 applicable Federal and State agencies;

7 “(ii) such distributor repackages the arti-
8 cle, product, or commodity in full compliance
9 with all applicable State and Federal laws and
10 regulations; and

11 “(iii) the act of repackaging does not re-
12 sult in a prohibited act under section 301 of the
13 Federal Food, Drug, and Cosmetic Act or vio-
14 late any other applicable State or Federal law
15 or regulation.

16 “(B) As used in this paragraph, the term ‘ship-
17 ping container’ means—

18 “(i) a container or wrapping used for the
19 transportation of any article, product, or com-
20 modity in bulk or in quantity to manufacturers,
21 packers, or processors, or to wholesale or retail
22 distributors thereof; and

23 “(ii) containers or wrappings used by re-
24 tailers to ship or deliver any article, product, or
25 commodity to retail customers, if such con-

1 tainers and wrappings bear no printed matter
2 pertaining to any particular article, product, or
3 commodity.

4 “(e) CRIMINAL PENALTIES.—Any person who will-
5 fully violates this section shall be punished as provided in
6 section 1365A of title 18.

7 “(f) CIVIL REMEDIES.—

8 “(1) IN GENERAL.—Any person who is injured
9 by a violation of this section, or threatened with
10 such injury, may bring a civil action in an appro-
11 priate United States district court against the al-
12 leged violator.

13 “(2) INJUNCTIONS AND IMPOUNDING AND DIS-
14 POSITION OF GOODS.—In any action under para-
15 graph (1), the court may—

16 “(A) grant 1 or more temporary, prelimi-
17 nary, or permanent injunctions on such terms
18 as the court determines to be reasonable to pre-
19 vent or restrain the violation;

20 “(B) at any time while the action is pend-
21 ing, order the impounding, on such terms as
22 the court determines to be reasonable, of any
23 good that is in the custody or control of the al-
24 leged violator and that the court has reasonable

1 cause to believe was involved in the violation;
2 and

3 “(C) as part of a final judgment or
4 decree—

5 “(i) order the destruction of any good
6 involved in the violation that is in the cus-
7 tody or control of the violator or that has
8 been impounded under subparagraph (B);
9 or

10 “(ii) if the court determines that any
11 good impounded under subparagraph (B)
12 is not unsafe or a hazard to health, dispose
13 of the good by delivery to such Federal,
14 State, or local government agencies as, in
15 the opinion of the court, have a need for
16 such good, or by gift to such charitable or
17 nonprofit institutions as, in the opinion of
18 the court, have a need for such good, if
19 such disposition would not otherwise be in
20 violation of law, and if the manufacturer
21 consents to such disposition and is given
22 the opportunity to reapply a product iden-
23 tification code to the good.

24 “(3) DAMAGES.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), in any action under paragraph (1),
3 the plaintiff shall be entitled to recover the ac-
4 tual damages suffered by the plaintiff as a re-
5 sult of the violation, and any profits of the vio-
6 lator that are attributable to the violation and
7 are not taken into account in computing the ac-
8 tual damages. In establishing the violator’s
9 profits, the plaintiff shall be required to present
10 proof only of the violator’s sales, and the viola-
11 tor shall be required to prove all elements of
12 cost or deduction claimed.

13 “(B) STATUTORY DAMAGES.—In any ac-
14 tion under paragraph (1), the plaintiff may
15 elect, at any time before final judgment is ren-
16 dered, to recover, instead of actual damages
17 and profits described in subparagraph (A), an
18 award of statutory damages for any violation
19 under this section in an amount equal to—

20 “(i) not less than \$500 and not more
21 than \$100,000, with respect to each type
22 of goods involved in the violation; and

23 “(ii) if the violation threatens the
24 health and safety of the public, as deter-
25 mined by the court, not less than \$5,000

1 and not more than \$1,000,000, with re-
2 spect to each type of goods involved in the
3 violation.

4 “(4) COSTS AND ATTORNEY’S FEES.—In any
5 action under paragraph (1)—

6 “(A) in addition to any damages recovered
7 under paragraph (3), a prevailing plaintiff may
8 recover the full costs of the action; and

9 “(B) the court, in its discretion, may also
10 award reasonable attorney fees to the prevailing
11 party.

12 “(5) REPEAT VIOLATIONS.—

13 “(A) TREBLE DAMAGES.—In any case in
14 which a person violates this section within 3
15 years after the date on which a final judgment
16 was entered against that person for a previous
17 violation of this section, the court, in an action
18 brought under this subsection, may increase the
19 award of damages for the later violation to not
20 more than 3 times the amount that would oth-
21 erwise be awarded under paragraph (3), as the
22 court considers appropriate.

23 “(B) BURDEN OF PROOF.—A plaintiff that
24 seeks damages as described in subparagraph

1 (A) shall bear the burden of proving the exist-
2 ence of the earlier violation.

3 “(6) LIMITATIONS ON ACTIONS.—No civil ac-
4 tion may be commenced under this section later than
5 3 years after the date on which the claimant dis-
6 covers the violation.

7 “(7) INNOCENT VIOLATIONS.—In any action
8 under paragraph (1), the court in its discretion may
9 reduce or remit the total award of damages in any
10 case in which the violator sustains the burden of
11 proving, and the court finds, that the violator was
12 not aware and had no reason to believe that the acts
13 of the violator constituted a violation.

14 “(g) ENFORCEMENT.—The Attorney General shall
15 enforce this section.”.

16 (b) CONFORMING AMENDMENT.—The heading for
17 title VIII of the Act of July 5, 1946, is amended by strik-
18 ing “AND DILUTION” and inserting “DILUTION,
19 AND ADULTERATION OF PRODUCT CODES”.

20 **SEC. 3. CRIMINAL PENALTIES.**

21 (a) IN GENERAL.—Chapter 65 of title 18, United
22 States Code, is amended by inserting after section 1365
23 the following:

1 **“§ 1365A. Criminal tampering with product identi-**
2 **fication codes**

3 “(a) CRIMINAL PENALTIES.—Any person who will-
4 fully violates section 43A of the Act of July 5, 1946 (com-
5 monly referred to as the ‘Trademark Act of 1946’) shall—

6 “(1) be fined under this title, imprisoned not
7 more than 1 year, or both;

8 “(2) if the total retail value of the good or
9 goods involved in the violation is greater than
10 \$5,000, be fined under this title, imprisoned not
11 more than 5 years, or both;

12 “(3) if the person acts with reckless disregard
13 for the risk that the health or safety of the public
14 would be threatened and under circumstances mani-
15 festing extreme indifference to such risk, and the
16 violation threatens the health or safety of the public,
17 be fined under this title, imprisoned not more than
18 10 years, or both;

19 “(4) if the person acts with reckless disregard
20 for the risk that another person will be placed in
21 danger of death or bodily injury and under cir-
22 cumstances manifesting extreme indifference to such
23 risk and—

24 “(A) serious bodily injury to any individual
25 results, be fined under this title, imprisoned not
26 more than 20 years, or both; or

1 “(B) death of an individual results, be
2 fined under this title, imprisoned for any term
3 of years or for life, or both; and

4 “(5) with respect to any second or subsequent
5 violation, be subject to twice the maximum term of
6 imprisonment that would otherwise be imposed
7 under this subsection, fined under this title, or both.

8 “(b) INJUNCTIONS AND IMPOUNDING, FORFEITURE,
9 AND DISPOSITION OF GOODS.—

10 “(1) INJUNCTIONS AND IMPOUNDING.—In any
11 prosecution under this section, upon motion of the
12 United States, the court may—

13 “(A) grant 1 or more temporary, prelimi-
14 nary, or permanent injunctions on such terms
15 as the court determines to be reasonable to pre-
16 vent or restrain the alleged violation; and

17 “(B) at any time during the proceedings,
18 order the impounding, on such terms as the
19 court determines to be reasonable, of any good
20 that is in the custody or control of the defend-
21 ant and that the court has reasonable cause to
22 believe was involved in the violation.

23 “(2) FORFEITURE AND DISPOSITION OF
24 GOODS.—Upon conviction of any person of a viola-
25 tion of this section, the court shall—

1 “(A) order the forfeiture of any good in-
2 volved in the violation that is in the custody or
3 control of the defendant or that has been im-
4 pounded under paragraph (1)(B); and

5 “(B) either—

6 “(i) order the destruction of each
7 good forfeited under subparagraph (A); or

8 “(ii) if the court determines that any
9 good forfeited under subparagraph (A) is
10 not unsafe or a hazard to health, dispose
11 of the good by delivery to such Federal,
12 State, or local government agencies as, in
13 the opinion of the court, have a need for
14 such good, or by gift to such charitable or
15 nonprofit institutions as, in the opinion of
16 the court, have a need for such good, if
17 such disposition would not otherwise be in
18 violation of law and if the manufacturer
19 consents to such disposition and is given
20 the opportunity to reapply a product iden-
21 tification code to the good.”.

22 (b) CONFORMING AMENDMENT.—The table of sec-
23 tions for chapter 65 of title 18, United States Code, is
24 amended by inserting after the item relating to section
25 1365 the following:

“1365A. Criminal tampering with product identification codes.”.

1 **SEC. 4. ATTORNEY GENERAL REPORTING REQUIREMENTS.**

2 Section 2320(f) of title 18, United States Code, is
3 amended—

4 (1) by inserting “criminal tampering with prod-
5 uct identification codes under section 1365A,” after
6 “involve”; and

7 (2) in paragraph (4), by inserting “1365A,”
8 after “sections”.

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