

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (e)(1), are set out in the Appendix to this title.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-403 amended subsec. (b) generally. Prior to amendment, text read as follows: “When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.”

§ 2320. Trafficking in counterfeit goods or services

(a) OFFENSES.—Whoever intentionally—

(1) traffics in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services,

(2) traffics in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive,

(3) traffics in goods or services knowing that such good or service is a counterfeit military good or service the use, malfunction, or failure of which is likely to cause serious bodily injury or death, the disclosure of classified information, impairment of combat operations, or other significant harm to a combat operation, a member of the Armed Forces, or to national security, or

(4) traffics in a drug and knowingly uses a counterfeit mark on or in connection with such drug,

or attempts or conspires to violate any of paragraphs (1) through (4) shall be punished as provided in subsection (b).

(b) PENALTIES.—

(1) IN GENERAL.—Whoever commits an offense under subsection (a)—

(A) if an individual, shall be fined not more than \$2,000,000 or imprisoned not more than 10 years, or both, and, if a person other than an individual, shall be fined not more than \$5,000,000; and

(B) for a second or subsequent offense under subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(2) SERIOUS BODILY INJURY OR DEATH.—

(A) SERIOUS BODILY INJURY.—Whoever knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned for not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(B) DEATH.—Whoever knowingly or recklessly causes or attempts to cause death

from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned for any term of years or for life, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(3) COUNTERFEIT MILITARY GOODS OR SERVICES AND COUNTERFEIT DRUGS.—Whoever commits an offense under subsection (a) involving a counterfeit military good or service or drug that uses a counterfeit mark on or in connection with the drug—

(A) if an individual, shall be fined not more than \$5,000,000, imprisoned not more than 20 years, or both, and if other than an individual, be fined not more than \$15,000,000; and

(B) for a second or subsequent offense, if an individual, shall be fined not more than \$15,000,000, imprisoned not more than 30 years, or both, and if other than an individual, shall be fined not more than \$30,000,000.

(c) FORFEITURE AND DESTRUCTION OF PROPERTY; RESTITUTION.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.

(d) DEFENSES.—All defenses, affirmative defenses, and limitations on remedies that would be applicable in an action under the Lanham Act shall be applicable in a prosecution under this section. In a prosecution under this section, the defendant shall have the burden of proof, by a preponderance of the evidence, of any such affirmative defense.

(e) PRESENTENCE REPORT.—(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Persons permitted to submit victim impact statements shall include—

(A) producers and sellers of legitimate goods or services affected by conduct involved in the offense;

(B) holders of intellectual property rights in such goods or services; and

(C) the legal representatives of such producers, sellers, and holders.

(f) DEFINITIONS.—For the purposes of this section—

(1) the term “counterfeit mark” means—

(A) a spurious mark—

(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature;

(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services for which the mark is registered in the United States Patent and Trademark Office; and

(iv) the use of which is likely to cause confusion, to cause mistake, or to deceive; or

(B) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of the Lanham Act are made available by reason of section 220506 of title 36;

but such term does not include any mark or designation used in connection with goods or services, or a mark or designation applied to labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature used in connection with such goods or services, of which the manufacturer or producer was, at the time of the manufacture or production in question, authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;

(2) the term “financial gain” includes the receipt, or expected receipt, of anything of value;

(3) the term “Lanham Act” means the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (15 U.S.C. 1051 et seq.);

(4) the term “counterfeit military good or service” means a good or service that uses a counterfeit mark on or in connection with such good or service and that—

(A) is falsely identified or labeled as meeting military specifications, or

(B) is intended for use in a military or national security application;

(5) the term “traffic” means to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of; and

(6) the term “drug” means a drug, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(g) LIMITATION ON CAUSE OF ACTION.—Nothing in this section shall entitle the United States to bring a criminal cause of action under this section for the repackaging of genuine goods or services not intended to deceive or confuse.

(h) REPORT TO CONGRESS.—(1) Beginning with the first year after the date of enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, an accounting, on a district by district basis, of the following with respect to all actions taken by the Department of Justice that involve trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works (as defined in section 2318 of this title), criminal infringement of copyrights (as defined in section 2319 of this title), unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances (as defined in section 2319A of this title), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of this title):

(A) The number of open investigations.

(B) The number of cases referred by the United States Customs Service.

(C) The number of cases referred by other agencies or sources.

(D) The number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under sections 2318, 2319, 2319A, and 2320 of title 18.

(2)(A) The report under paragraph (1), with respect to criminal infringement of copyright, shall include the following:

(i) The number of infringement cases in these categories: audiovisual (videos and films); audio (sound recordings); literary works (books and musical compositions); computer programs; video games; and, others.

(ii) The number of online infringement cases.

(iii) The number and dollar amounts of fines assessed in specific categories of dollar amounts. These categories shall be: no fines ordered; fines under \$500; fines from \$500 to \$1,000; fines from \$1,000 to \$5,000; fines from \$5,000 to \$10,000; and fines over \$10,000.

(iv) The total amount of restitution ordered in all copyright infringement cases.

(B) In this paragraph, the term “online infringement cases” as used in paragraph (2) means those cases where the infringer—

(i) advertised or publicized the infringing work on the Internet; or

(ii) made the infringing work available on the Internet for download, reproduction, performance, or distribution by other persons.

(C) The information required under subparagraph (A) shall be submitted in the report required in fiscal year 2005 and thereafter.

(i) TRANSSHIPMENT AND EXPORTATION.—No goods or services, the trafficking in of which is prohibited by this section, shall be transshipped through or exported from the United States. Any such transshipment or exportation shall be deemed a violation of section 42 of an Act to provide for the registration of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes, approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946” or the “Lanham Act”).

(Added Pub. L. 98-473, title II, §1502(a), Oct. 12, 1984, 98 Stat. 2178; amended Pub. L. 103-322, title XXXII, §320104(a), title XXXIII, §330016(1)(U), Sept. 13, 1994, 108 Stat. 2110, 2148; Pub. L. 104-153, §5, July 2, 1996, 110 Stat. 1387; Pub. L. 105-147, §2(f), Dec. 16, 1997, 111 Stat. 2679; Pub. L. 105-225, §4(b), Aug. 12, 1998, 112 Stat. 1499; Pub. L. 105-354, §2(c)(1), Nov. 3, 1998, 112 Stat. 3244; Pub. L. 107-140, §1, Feb. 8, 2002, 116 Stat. 12; Pub. L. 107-273, div. A, title II, §205(e), Nov. 2, 2002, 116 Stat. 1778; Pub. L. 109-181, §§1(b), 2(b), Mar. 16, 2006, 120 Stat. 285, 288; Pub. L. 110-403, title II, §205, Oct. 13, 2008, 122 Stat. 4261; Pub. L. 112-81, div. A, title VIII, §818(h), Dec. 31, 2011, 125 Stat. 1497; Pub. L. 112-144, title VII, §717(a)(1)-(3), July 9, 2012, 126 Stat. 1076; Pub. L. 114-154, §3(2), May 16, 2016, 130 Stat. 387.)

REFERENCES IN TEXT

The Lanham Act, referred to in subsections. (d), (f)(1)(B), (3), and (i), also known as the Trademark Act of 1946, is act July 5, 1946, ch. 540, 60 Stat. 427, which is classified generally to chapter 22 (§1051 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1051 of Title 15 and Tables.

The Federal Rules of Criminal Procedure, referred to in subsection. (e)(1), are set out in the Appendix to this title.

The date of enactment of this subsection, referred to in subsection. (h)(1), is the date of enactment of Pub. L. 112-81, which was approved Dec. 31, 2011.

CODIFICATION

Another section 2320 was renumbered section 2321 of this title.

AMENDMENTS

2016—Subsec. (a)(4). Pub. L. 114-154, §3(2)(A), added par. (4) and struck out former par. (4) which read as follows: “traffics in a counterfeit drug.”

Subsec. (b)(3). Pub. L. 114-154, §3(2)(B), substituted “drug that uses a counterfeit mark on or in connection with the drug” for “counterfeit drug” in introductory provisions.

Subsec. (f)(6). Pub. L. 114-154, §3(2)(C), added par. (6) and struck out former par. (6) which defined “counterfeit drug”.

2012—Subsec. (a). Pub. L. 112-144, §717(a)(1), added par. (4) and substituted “through (4)” for “through (3)” in concluding provisions.

Subsec. (b)(3). Pub. L. 112-144, §717(a)(2), inserted “and counterfeit drugs” after “services” in heading and “or counterfeit drug” after “service” in introductory provisions.

Subsec. (f)(6). Pub. L. 112-144, §717(a)(3), added par. (6).

2011—Pub. L. 112-81 amended section generally, adding provisions relating to counterfeit military goods and services.

2008—Subsec. (a). Pub. L. 110-403, §205(a)(1), inserted subsection heading, designated existing provisions as par. (1) and inserted par. heading, substituted “Whoever;” for “Whoever”, realigned margin, and added par. (2).

Subsec. (b). Pub. L. 110-403, §205(b), amended subsection. (b) generally. Prior to amendment, subsection. (b) related to property subject to forfeiture, forfeiture procedures, and restitution.

Subsec. (h). Pub. L. 110-403, §205(a)(2), added subsection. (h).

2006—Subsec. (a). Pub. L. 109-181, §1(b)(1), inserted “, or intentionally traffics or attempts to traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confu-

sion, to cause mistake, or to deceive,” after “such goods or services”.

Subsec. (b). Pub. L. 109-181, §1(b)(2), amended subsection. (b) generally. Prior to amendment, subsection. (b) read as follows: “Upon a determination by a preponderance of the evidence that any articles in the possession of a defendant in a prosecution under this section bear counterfeit marks, the United States may obtain an order for the destruction of such articles.”

Subsec. (e)(1). Pub. L. 109-181, §1(b)(3)(B), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: “but such term does not include any mark or designation used in connection with goods or services of which the manufacturer or producer was, at the time of the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;”

Subsec. (e)(1)(A). Pub. L. 109-181, §1(b)(3)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: “a spurious mark—

“(i) that is used in connection with trafficking in goods or services;

“(ii) that is identical with, or substantially indistinguishable from, a mark registered for those goods or services on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered; and

“(iii) the use of which is likely to cause confusion, to cause mistake, or to deceive; or”.

Subsec. (e)(2). Pub. L. 109-181, §2(b)(1), added par. (2) and struck out former par. (2) which read as follows: “the term ‘traffic’ means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent so to transport, transfer, or dispose of; and”.

Subsec. (e)(3), (4). Pub. L. 109-181, §2(b)(2), (3), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (f), (g). Pub. L. 109-181, §1(b)(4), added subsection. (f) and redesignated former subsection. (f) as (g).

2002—Subsec. (e)(1)(B). Pub. L. 107-140 substituted “section 220506 of title 36” for “section 220706 of title 36”.

Subsec. (f). Pub. L. 107-273, §205(e), designated existing provisions as par. (1), substituted “this title” for “title 18” wherever appearing, redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), and added par. (2).

1998—Subsec. (e)(1)(B). Pub. L. 105-225, §4(b)(1), as amended by Pub. L. 105-354, §2(c)(1), substituted “section 220706 of title 36” for “section 110 of the Olympic Charter Act”.

Subsec. (e)(2). Pub. L. 105-225, §4(b)(2), as amended by Pub. L. 105-354, §2(c)(1), inserted “and” after semicolon at end.

Subsec. (e)(3). Pub. L. 105-225, §4(b)(3), as amended by Pub. L. 105-354, §2(c)(1), substituted a period for “; and” at end.

Subsec. (e)(4). Pub. L. 105-225, §4(b)(4), as amended by Pub. L. 105-354, §2(c)(1), struck out par. (4) which read as follows: “the term ‘Olympic Charter Act’ means the Act entitled ‘An Act to incorporate the United States Olympic Association’, approved September 21, 1950 (36 U.S.C. 371 et seq.)”.

1997—Subsecs. (d) to (f). Pub. L. 105-147 added subsection. (d) and redesignated former subsections. (d) and (e) as (e) and (f), respectively.

1996—Subsec. (e). Pub. L. 104-153 added subsection. (e).

1994—Pub. L. 103-322, §330016(1)(U), which directed the amendment of this section by striking “not more than \$250,000” and inserting “under this title”, could not be executed because the phrase “not more than \$250,000” did not appear in text subsequent to amendment of subsection. (a) by Pub. L. 103-322, §320104(a). See below.

Subsec. (a). Pub. L. 103-322, §320104(a), in first sentence, substituted “\$2,000,000 or imprisoned not more than 10 years” for “\$250,000 or imprisoned not more than five years” and “\$5,000,000” for “\$1,000,000”, and in

second sentence, substituted “\$5,000,000 or imprisoned not more than 20 years” for “\$1,000,000 or imprisoned not more than fifteen years” and “\$15,000,000” for “\$5,000,000”.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-354, §2(c), Nov. 3, 1998, 112 Stat. 3244, provided that the amendment made by section 2(c) is effective Aug. 12, 1998.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

PRIORITY GIVEN TO CERTAIN INVESTIGATIONS AND PROSECUTIONS

Pub. L. 112-144, title VII, §717(a)(4), July 9, 2012, 126 Stat. 1076, provided that: “The Attorney General shall give increased priority to efforts to investigate and prosecute offenses under section 2320 of title 18, United States Code, that involve counterfeit drugs.”

FINDINGS

Pub. L. 109-181, §1(a)(2), Mar. 16, 2006, 120 Stat. 285, provided that: “The Congress finds that—

“(A) the United States economy is losing millions of dollars in tax revenue and tens of thousands of jobs because of the manufacture, distribution, and sale of counterfeit goods;

“(B) the Bureau of Customs and Border Protection estimates that counterfeiting costs the United States \$200 billion annually;

“(C) counterfeit automobile parts, including brake pads, cost the auto industry alone billions of dollars in lost sales each year;

“(D) counterfeit products have invaded numerous industries, including those producing auto parts, electrical appliances, medicines, tools, toys, office equipment, clothing, and many other products;

“(E) ties have been established between counterfeiting and terrorist organizations that use the sale of counterfeit goods to raise and launder money;

“(F) ongoing counterfeiting of manufactured goods poses a widespread threat to public health and safety; and

“(G) strong domestic criminal remedies against counterfeiting will permit the United States to seek stronger anticounterfeiting provisions in bilateral and international agreements with trading partners.”

§ 2321. Trafficking in certain motor vehicles or motor vehicle parts

(a) Whoever buys, receives, possesses, or obtains control of, with intent to sell or otherwise dispose of, a motor vehicle or motor vehicle part, knowing that an identification number for such motor vehicle or part has been removed, obliterated, tampered with, or altered, shall be fined under this title or imprisoned not more than ten years, or both.

(b) Subsection (a) does not apply if the removal, obliteration, tampering, or alteration—

(1) is caused by collision or fire; or

(2) is not a violation of section 511 of this title.

(c) As used in this section, the terms “identification number” and “motor vehicle” have the meaning given those terms in section 511 of this title.

(Added Pub. L. 98-547, title II, §204(a), Oct. 25, 1984, 98 Stat. 2770, §2320; renumbered §2321, Pub. L. 99-646, §42(a), Nov. 10, 1986, 100 Stat. 3601; amended Pub. L. 103-322, title XXXIII, §330016(1)(N), Sept. 13, 1994, 108 Stat. 2148.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$20,000”.

§ 2322. Chop shops

(a) IN GENERAL.—

(1) UNLAWFUL ACTION.—Any person who knowingly owns, operates, maintains, or controls a chop shop or conducts operations in a chop shop shall be punished by a fine under this title or by imprisonment for not more than 15 years, or both. If a conviction of a person under this paragraph is for a violation committed after the first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to any fine and imprisonment.

(2) INJUNCTIONS.—The Attorney General shall, as appropriate, in the case of any person who violates paragraph (1), commence a civil action for permanent or temporary injunction to restrain such violation.

(b) DEFINITION.—For purposes of this section, the term “chop shop” means any building, lot, facility, or other structure or premise where one or more persons engage in receiving, concealing, destroying, disassembling, dismantling, reassembling, or storing any passenger motor vehicle or passenger motor vehicle part which has been unlawfully obtained in order to alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number or derivative thereof, of such vehicle or vehicle part and to distribute, sell, or dispose of such vehicle or vehicle part in interstate or foreign commerce.

(Added Pub. L. 102-519, title I, §105(a), Oct. 25, 1992, 106 Stat. 3385.)

§ 2323. Forfeiture, destruction, and restitution

(a) CIVIL FORFEITURE.—

(1) PROPERTY SUBJECT TO FORFEITURE.—The following property is subject to forfeiture to the United States Government:

(A) Any article, the making or trafficking of which is, prohibited under section 506 of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title.

(B) Any property used, or intended to be used, in any manner or part to commit or facilitate the commission of an offense referred to in subparagraph (A).

(C) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of an offense referred to in subparagraph (A).

(2) PROCEDURES.—The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this sec-