



March 10, 2000

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500 South
Washington, DC 20002-8002

Attn: Public Information – Public Comment

Re: **Comments of the International AntiCounterfeiting Coalition, Inc.
Regarding Proposed Amendments to Section 2B5.3**

Ladies and Gentlemen:

On behalf of its members, the International AntiCounterfeiting Coalition, Inc. ("IACC") respectfully submits the following comments in response to the United States Sentencing Commission's ("Commission") Federal Register Notice of February 11, 2000, and request permission to testify at the Commission's hearing on March 23, 2000. These comments are meant to supplement those provided by the IACC to the Commission on January 26, 2000.

The IACC supports the Commission's new Option 4 with one recommended change. Specifically, the IACC recommends that the Commission amend subsection b(2) of Option 4 to call for a two-level decrease in cases where the offense involved both greatly discounted merchandise and the quality or performance of the infringing item was substantially inferior to the quality or performance of the infringed item. With this change, the proposal would satisfy the primary concerns articulated in the IACC's earlier comments and successfully implement the mandate of the No Electronic Theft Act

IACC Recommendations

The IACC reiterates the concerns it articulated in its earlier comments regarding Options 1-3 and suggests a modification of Option 4¹

The IACC's criticism of Option 4 stems from the use of "greatly discounted merchandise," and "substantially inferior" as specific offense characteristics that separately

¹ The IACC remains concerned that the downward departure provision of Option 1 generates a level of uncertainty that is antithetical to the Commission's objective in promulgating guidelines. As noted previously, the departure consideration found in 5(B) gives way to a more substantive determination as to whether the calculation substantially understates or overstates the pecuniary harm of the offense. An additional concern is that the only example provided to guide prosecutors and judges in applying the provision is that of a trademark case that may justify a downward departure. The IACC recommends that in this instance any official examples should cover both downward and upward scenarios and not specify a type of product in order to avoid prejudicing consideration by judges, prosecutors or defendants.

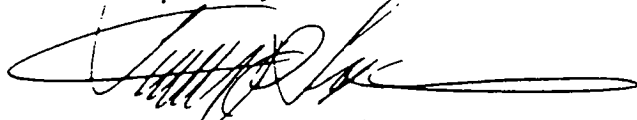
result in a two-level decrease. The IACC is concerned that these provisions only serve to reward counterfeiters and pirates that sell substantially inferior merchandise (as distinct from marginally inferior merchandise) at substantially reduced prices (instead of marginally discounted prices).

If the Commission wishes to make a distinction between classes of infringing items based on price and quality, it should do so by considering both characteristics as a whole. Price alone may be an indicator that goods are false, but if the infringing products are of decent quality, they may translate into a one-for-one sales loss that is properly captured without a two-level decrease. Likewise, poor quality may call into question the authenticity of a product, but if counterfeiters and pirates find that they can sell cheap knock-offs at higher prices, they most certainly will.

Finally, digital technology now allows for near perfect reproduction of some works. The IACC does not believe that copyright pirates making exact copies of popular software, music or videos should benefit from a two-level decrease simply because they sell their products cheaply. Consequently, the IACC recommends that the Commission amend Option 4 to call for a two-level decrease when the offense involved greatly discounted merchandise and the quality or performance of the infringing item was substantially inferior to the quality or performance of the infringed item.

The IACC commends the Commission for its hard work in devising a guideline to capture the many nuances of intellectual property crimes. Trademark counterfeiting and copyright piracy are serious crimes. They discourage creativity, devalue investment, harm reputations, and often defraud consumers. Limited law enforcement resources and minimal penalties, however, have made criminal enforcement of intellectual property rights a low priority at the federal level. The enhancements proposed by the Commission in Option 4 will help to encourage prosecutions and deter counterfeiting and piracy.

Respectfully Submitted,



Tim Trainer, President
International AntiCounterfeiting Coalition, Inc.

cc Judge Ruben Castillo
Judge Sterling Johnson, Jr
Judge Joe Kendall
Judge Diana E. Murphy
Judge William K. Sessions, III
Mr John R. Steer
Professor Michael O'Neill