

**PREPARED TESTIMONY OF JOHN S. BLISS
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UNITED STATES SENTENCING COMMISSION

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My name is John Bliss and I am President of the International AntiCounterfeiting Coalition (IACC). The IACC is a non-profit trade association comprised of more than 170 members, representing corporations, business trade associations and professional firms whose livelihoods depend on the protection of intellectual property rights. Our members are drawn from a cross-section of U.S. industry including auto, apparel, luxury goods, pharmaceuticals, food, computer software, entertainment, and others. Consumers who use the products of our manufacturing members expect these products to be safe and to be of high quality. Unfortunately counterfeiters too often undermine the expectations of consumers by stealing the names and reputations of legitimate manufacturers to sell inferior products for quick profits.

On behalf of the IACC, let me express my gratitude for being afforded this opportunity to testify and offer comments on how Sec. 2B5.3 (Criminal Infringement of Copyright or Trademark) should be amended to best effectuate congressional directives set forth in P.L. 105-147, the No Electronic Theft Act (NET).

The IACC and its members maintain that the only way to effectively deter counterfeiting is to assure that counterfeiters receive jail time for their actions. Stringent criminal penalties are necessary because the nature of counterfeiting as an illicit underground operation does not lend itself to civil enforcement. As a cash business, damages are difficult to prove in counterfeiting cases, and counterfeiters treat monetary damage awards and fines as merely the cost-of-doing-business. The only real deterrent to counterfeiting is the imposition of criminal penalties that result in actual jail time served of one year or more.

Scope of Counterfeiting

In 1982, counterfeiting cost the U.S. an estimated \$5.5 billion. Today, the problem has become an epidemic, generating losses of over \$200 billion. This explosive growth has been accompanied by a migration in the availability of counterfeits from traditional locations like city streets, flea markets, swap meets, and sports stadiums to suburbs, strip-malls, and the shelves of legitimate retail stores.

Of particular concern to the IACC is the increasing availability of fakes that present health and safety risks. Three recent examples underscore this point.

(1) Procter & Gamble, maker of Head & Shoulders shampoo, was forced to take the extraordinary but appropriate step of placing half-page advertisements in at least 27 national newspapers informing the general public that counterfeit Head & Shoulders was available in retail stores. A chief concern of the manufacturer was the fact that the fakes may have contained bacteria, risking infection in users with weakened immune systems.

(2) Counterfeit-labeled infant formula recently found its way onto shelves in Safeway and Pak n' Save grocery stores in 16 states. According to press reports, the fake baby formula caused rashes and seizures in many

of the babies who were given it, prompting concerned parents to notify the legitimate manufacturer.

(3), Counterfeit-labeled confectionery food was seized during a raid in Boston. Illegally labeled as a product of Borden Eagle Brand, the so-called "Almond Bark" butterscotch candy had been stored in unsanitary conditions. Fortunately, while the counterfeit product was awaiting distribution, investigators located the fake food, and confiscated the product.

Another concern is organized crime's growing involvement in product counterfeiting. Attracted by the high profits and low risks generated by counterfeiting and piracy, these notorious organizations operate vast distribution networks to transport fake goods and support other criminal activity. For example, in three recent raids conducted in Los Angeles, law enforcement seized counterfeit Microsoft software and other material with a potential retail value in excess of \$10.5 million. Implicated in this activity were three Chinese organized crime groups known as triads. Los Angeles Sheriff's deputies seized counterfeit software, manuals and holograms and were surprised when they stumbled upon four pounds of plastic explosives, two pounds of TNT, shotguns, handguns, and silencers.

Organized crime has also used counterfeiting to further drug trafficking operations. In a recent New Jersey case, police seized \$400,000 worth of counterfeit handbags. During the raid, law enforcement officials used a trained police dog to discover that heroin had been stitched into the linings of the counterfeit designer bags. Contraband used to transport contraband.

Finally, the sale of counterfeit goods adversely impacts the economy. New York City alone loses over \$400 million a year in lost sales and excise taxes. The U.S. Customs Service estimates that hundreds of thousands of Americans lose their jobs every year due to counterfeiting, and the automobile industry says that they could hire 210,000 additional workers if auto parts counterfeiting could be eliminated. And small legitimate retailers and entrepreneurs suffer as they are forced to compete with companies and retailers selling illegal low-cost fakes.

As these examples demonstrate, counterfeiting is no longer small mom-and-pop operations sewing labels on T-shirts. Counterfeiters are sophisticated, organized crime groups that use counterfeiting to fund and support other criminal activities.

Congressional Intent

Faced with evidence regarding the extent of counterfeiting and its harms to society, Congress recently took several steps to increase the level of priority federal law enforcement attaches to intellectual property crimes. First, congress passed P.L. 104-153, the Anticounterfeiting Consumer Protection Act of 1996, (ACPA). The ACPA recognized that "[t]he counterfeiting of trademarked and copyrighted merchandise -- (1) has been connected with organized crime; (2) deprives legitimate trademark and copyright owners of substantial revenues and consumer goodwill; (3) poses health and safety threats to American consumers; (4) eliminates American jobs; and (5) is a