



Ohio Revised Code

Section 2913.34 Trademark counterfeiting.

Effective: September 30, 2011

Legislation: House Bill 86 - 129th General Assembly

(A) No person shall knowingly do any of the following:

(1) Attach, affix, or otherwise use a counterfeit mark in connection with the manufacture of goods or services, whether or not the goods or services are intended for sale or resale;

(2) Possess, sell, or offer for sale tools, machines, instruments, materials, articles, or other items of personal property with the knowledge that they are designed for the production or reproduction of counterfeit marks;

(3) Purchase or otherwise acquire goods, and keep or otherwise have the goods in the person's possession, with the knowledge that a counterfeit mark is attached to, affixed to, or otherwise used in connection with the goods and with the intent to sell or otherwise dispose of the goods;

(4) Sell, offer for sale, or otherwise dispose of goods with the knowledge that a counterfeit mark is attached to, affixed to, or otherwise used in connection with the goods;

(5) Sell, offer for sale, or otherwise provide services with the knowledge that a counterfeit mark is used in connection with that sale, offer for sale, or other provision of the services.

(B)(1) Whoever violates this section is guilty of trademark counterfeiting.

(2) Except as otherwise provided in this division, a violation of division (A)(1) of this section is a felony of the fifth degree. Except as otherwise provided in this division, if the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is five thousand dollars or more but less than one hundred thousand dollars or if the number of units of goods to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is more than one hundred units but less than one thousand units, a violation of division (A)(1) of this section is a felony of the



fourth degree. If the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is one hundred thousand dollars or more or if the number of units of goods to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is one thousand units or more, a violation of division (A)(1) of this section is a felony of the third degree.

(3) Except as otherwise provided in this division, a violation of division (A)(2) of this section is a misdemeanor of the first degree. If the circumstances of the violation indicate that the tools, machines, instruments, materials, articles, or other items of personal property involved in the violation were intended for use in the commission of a felony, a violation of division (A)(2) of this section is a felony of the fifth degree.

(4) Except as otherwise provided in this division, a violation of division (A)(3), (4), or (5) of this section is a misdemeanor of the first degree. Except as otherwise provided in this division, if the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is one thousand dollars or more but less than seven thousand five hundred dollars, a violation of division (A)(3), (4), or (5) of this section is a felony of the fifth degree. Except as otherwise provided in this division, if the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars or if the number of units of goods to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is more than one hundred units but less than one thousand units, a violation of division (A)(3), (4), or (5) of this section is a felony of the fourth degree. If the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is one hundred fifty thousand dollars or more or if the number of units of goods to which or in connection with which the counterfeit mark is attached, affixed, or otherwise used in the offense is one thousand units or more, a violation of division (A)(3), (4), or (5) of this section is a felony of the third degree.

(C) A defendant may assert as an affirmative defense to a charge of a violation of this section defenses, affirmative defenses, and limitations on remedies that would be available in a civil, criminal, or administrative action or proceeding under the "Lanham Act," 60 Stat. 427-443 (1946),



15 U.S.C. 1051-1127, as amended, "The Trademark Counterfeiting Act of 1984," 98 Stat. 2178, 18 U.S.C. 2320, as amended, Chapter 1329. or another section of the Revised Code, or common law.

(D)(1) Law enforcement officers may seize pursuant to Criminal Rule 41 or Chapter 2933. or 2981. of the Revised Code either of the following:

(a) Goods to which or in connection with which a person attached, affixed, otherwise used, or intended to attach, affix, or otherwise use a counterfeit mark in violation of this section;

(b) Tools, machines, instruments, materials, articles, vehicles, or other items of personal property that are possessed, sold, offered for sale, or used in a violation of this section or in an attempt to commit or complicity in the commission of a violation of this section.

(2) Notwithstanding any contrary provision of Chapter 2981. of the Revised Code, if a person is convicted of or pleads guilty to a violation of this section, an attempt to violate this section, or complicity in a violation of this section, the court involved shall declare that the goods described in division (D)(1)(a) of this section and the personal property described in division (D)(1)(b) of this section are contraband and are forfeited. Prior to the court's entry of judgment under Criminal Rule 32, the owner of a registered trademark or service mark that is the subject of the counterfeit mark may recommend a manner in which the forfeited goods and forfeited personal property should be disposed of. If that owner makes a timely recommendation of a manner of disposition, the court is not bound by the recommendation. If that owner makes a timely recommendation of a manner of disposition, the court may include in its entry of judgment an order that requires appropriate persons to dispose of the forfeited goods and forfeited personal property in the recommended manner. If that owner fails to make a timely recommendation of a manner of disposition or if that owner makes a timely recommendation of the manner of disposition but the court determines to not follow the recommendation, the court shall include in its entry of judgment an order that requires the law enforcement agency that employs the law enforcement officer who seized the forfeited goods or the forfeited personal property to destroy them or cause their destruction.

(E) This section does not affect the rights of an owner of a trademark or a service mark, or the enforcement in a civil action or in administrative proceedings of the rights of an owner of a trademark or a service mark, under the "Lanham Act," 60 Stat. 427-443 (1946), 15 U.S.C. 1051-



1127, as amended, "The Trademark Counterfeiting Act of 1984," 92 Stat. 2178, 18 U.S.C. 2320, as amended, Chapter 1329. or another section of the Revised Code, or common law.

(F) As used in this section:

(1)(a) Except as provided in division (F)(1)(b) of this section, "counterfeit mark" means a spurious trademark or a spurious service mark that satisfies both of the following:

(i) It is identical with or substantially indistinguishable from a mark that is registered on the principal register in the United States patent and trademark office for the same goods or services as the goods or services to which or in connection with which the spurious trademark or spurious service mark is attached, affixed, or otherwise used or from a mark that is registered with the secretary of state pursuant to sections 1329.54 to 1329.67 of the Revised Code for the same goods or services as the goods or services to which or in connection with which the spurious trademark or spurious service mark is attached, affixed, or otherwise used, and the owner of the registration uses the registered mark, whether or not the offender knows that the mark is registered in a manner described in division (F)(1)(a)(i) of this section.

(ii) Its use is likely to cause confusion or mistake or to deceive other persons.

(b) "Counterfeit mark" does not include a mark or other designation that is attached to, affixed to, or otherwise used in connection with goods or services if the holder of the right to use the mark or other designation authorizes the manufacturer, producer, or vendor of those goods or services to attach, affix, or otherwise use the mark or other designation in connection with those goods or services at the time of their manufacture, production, or sale.

(2) "Cumulative sales price" means the product of the lowest single unit sales price charged or sought to be charged by an offender for goods to which or in connection with which a counterfeit mark is attached, affixed, or otherwise used or of the lowest single service transaction price charged or sought to be charged by an offender for services in connection with which a counterfeit mark is used, multiplied by the total number of those goods or services, whether or not units of goods are sold or are in an offender's possession, custody, or control.



(3) "Registered trademark or service mark" means a trademark or service mark that is registered in a manner described in division (F)(1) of this section.

(4) "Trademark" and "service mark" have the same meanings as in section 1329.54 of the Revised Code.