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HOUSE BILL NO. 464

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 11, 1996)

(Patron Prior to Substitute — Delegate Reynolds)

*A BILL to amend and reenact §§ 59.1-88 and 59.1-89 of the Code of Virginia, relating to infringement of trademarks; penalties.***Be it enacted by the General Assembly of Virginia:****1. That §§ 59.1-88 and 59.1-89 of the Code of Virginia are amended and reenacted as follows:**

§ 59.1-88. Infringement.

Subject to the provisions of § 59.1-89, any person who shall

(a) Use (i) uses, in this Commonwealth, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of any registered trademark, case mark or service mark, trade name, label, or design in connection with the sale, offering for sale, manufacturing, distribution, or advertising of any goods or services in a manner likely to cause confusion or mistake or to deceive purchasers as to the source or origin of such goods or services; or

(b) Reproduce, counterfeit, copy (ii) reproduces, counterfeits, copies, or colorably imitate imitates any such trademark, case mark or service mark, trade name, label, or design and apply applies such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles apparel, manufactured items, or advertisements intended to be used upon or in connection with the sale or other distribution in this Commonwealth of such goods or services;

Shall, shall be liable to civil action by the registrant for any or all of the remedies hereinafter as provided in § 59.1-89, except that under subsection (b) hereof clause (ii) the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such trademark, case mark or service mark is intended to be used to cause confusion or mistake or to deceive purchasers.

§ 59.1-89. Remedies; criminal penalties.

A. Any owner of a trademark or service mark registered under this chapter, or prior acts, and in force and effect, may proceed by suit in a circuit court, or court of equity jurisdiction, to enjoin the manufacture, use, display or sale in this Commonwealth of any counterfeits or imitations thereof and the court may grant injunctions to restrain such manufacture, use, display or sale as may be by the court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and the court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in the case be delivered to an officer of the court, or to the complainant, to be destroyed for destruction or disposition.

B. Any person who knowingly and intentionally violates the provisions of § 59.1-88 is guilty of a Class 2 misdemeanor and, upon a second or subsequent conviction, is guilty of a Class 6 felony.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is .HOUSE
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