

TITLE 78 Oklahoma Statutes

78 O.S. § 78-21 (A) language: The term "trademark" as used herein means any word, name, symbol, emblem, or device or any combination thereof adopted and used by a person to identify goods made or sold or services rendered by him and to distinguish them from goods made or sold or services rendered by others."

78 O.S. § 78-21 (E) rule: For the purposes of this act, a trademark shall be deemed to be "used" in this state (1) when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state, or (2) when it is used in any manner in connection with the sale or advertising of services in this state.

see also: 'fanciful trademark' described by Hoyt L. Barber (ISBN 0-8306-0233-X) "Copyrights, Patents & Trademarks Worldwide" in common law usage and so used for an 'original alien race' or other protected fiction in literature and publication, by class, and other classes of software and interactive media and publication of art and game design so protected intangible works under State of Oklahoma per 1907 and since incorporation of such member State of the Federal Union, known generally as 'United States' or "The United States", a country, and its agent "UNITED STATES", a government organization in treaty made.

TITLE 21 Oklahoma Criminal Statutes

§21-1732. Larceny of trade secrets - Applicability of section.

A. Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another:

(a) steals or embezzles an article representing a trade secret, or,

(b) without authority makes or causes to be made a copy of an article representing a trade secret, shall be guilty of larceny under Section 1704 of this title. For purposes of determining whether such larceny is grand larceny or petit larceny under this section, the value of the trade secret and not the value of the article shall be controlling.

B. (a) The word "article" means any object, material, device, customer list, business records, or substance or copy thereof, including any writing, record, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, information stored in any computer-related format, or map.

(b) The word "representing" means describing, depleting, containing, constituting, reflecting or recording.

(c) The term "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, customer list, business records or process, that:

1. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(d) The word "copy" means any facsimile, replica, photograph or other reproduction of an article, including copying, transferring and e-mailing of computer data, and any note, drawing or sketch made of or from an article.

C. In a prosecution for a violation of this act, it shall be no defense that the person so charged returned or intended to return the article so stolen, embezzled or copied.

D. The provisions of this section shall not apply if the person acted in accordance with a written agreement with the person's employer that specified the manner in which disputes involving clients are to be resolved upon termination of the employer-employee relationship.

Added by Laws 1968, c. 110, §§ 1 to 3, emerg. eff. April 1, 1968.

Amended by Laws 1986, c. 85, § 12, eff. Nov. 1, 1986; Laws 2009, c. 287, § 1, eff. Nov. 1, 2009.

§21-1951. Short title.

This act shall be known and may be cited as the "Oklahoma Computer Crimes Act".

Added by Laws 1984, c. 70, § 1, emerg. eff. March 29, 1984.

§21-1952. Definitions.

As used in the Oklahoma Computer Crimes Act:

1. "Access" means to approach, gain entry to, instruct, communicate with, store data in, retrieve data from or otherwise use the logical, arithmetical, memory or other resources of a computer, computer system or computer network;
2. "Computer" means an electronic device which performs work using programmed instruction having one or more of the capabilities of storage, logic, arithmetic or communication. The term includes input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network;
3. "Computer network" means the interconnection of terminals by communication modes with a computer, or a complex consisting of two or more interconnected computers;
4. "Computer program" means a set or series of instructions or statements and related data which when executed in actual or modified form directs or is intended to direct the functioning of a computer system in a manner designed to perform certain operations;
5. "Computer software" means one or more computer programs, procedures and associated documentation used in the operation of a computer system;
6. "Computer system" means a set of related, connected or unconnected, computer equipment, devices including support devices, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control and software. "Computer system" does not include calculators which are not programmable and are not capable of being connected to or used to access other computers, computer networks, computer systems or support devices;
7. "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device;
8. "Property" means any tangible or intangible item of value and includes, but is not limited to, financial instruments, geophysical data or the interpretation of that data, information, computer software, computer programs, electronically-produced data and computer-produced or stored data, supporting documentation, computer software in either machine or human readable form, electronic impulses, confidential, copyrighted or proprietary information, private identification codes or numbers which permit access to a

computer by authorized computer users or generate billings to consumers for purchase of goods and services, including but not limited to credit card transactions and telecommunications services or permit electronic fund transfers and any other tangible or intangible item of value;

9. "Services" includes, but is not limited to, computer time, data processing and storage functions and other uses of a computer, computer system or computer network to perform useful work;

10. "Supporting documentation" includes, but is not limited to, all documentation in any form used in the construction, design, classification, implementation, use or modification of computer software, computer programs or data; and

11. "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program or data was or was not altered, deleted, disrupted, damaged or destroyed by the access. Added by Laws 1984, c. 70, § 2, emerg. eff. March 29, 1984. Amended by Laws 1989, c. 151, § 1, eff. Nov. 1, 1989.

§21-1953. Prohibited acts.

A. It shall be unlawful to:

1. Willfully, and without authorization, gain or attempt to gain access to and damage, modify, alter, delete, destroy, copy, make use of, disclose or take possession of a computer, computer system, computer network or any other property;

2. Use a computer, computer system, computer network or any other property as hereinbefore defined for the purpose of devising or executing a scheme or artifice with the intent to defraud, deceive, extort or for the purpose of controlling or obtaining money, property, services or other thing of value by means of a false or fraudulent pretense or representation;

3. Willfully exceed the limits of authorization and damage, modify, alter, destroy, copy, delete, disclose or take possession of a computer, computer system, computer network or any other property;

4. Willfully and without authorization, gain or attempt to gain access to a computer, computer system, computer network or any other property;

5. Willfully and without authorization use or cause to be used computer services;

6. Willfully and without authorization disrupt or cause the disruption of computer services or deny or cause the denial of access or other computer services to an authorized user of a computer, computer system or computer network;

7. Willfully and without authorization provide or assist in providing a means of accessing a computer, computer system or computer network in violation of this section;

8. Willfully use a computer, computer system, or computer network to annoy, abuse, threaten, or harass another person; and

9. Willfully use a computer, computer system, or computer

network to put another person in fear of physical harm or death.

B. Any person convicted of violating paragraph 1, 2, 3, 6, 7 or 9 of subsection A of this section shall be guilty of a felony punishable as provided in Section 1955 of this title.

C. Any person convicted of violating paragraph 4, 5 or 8 of subsection A of this section shall be guilty of a misdemeanor.

D. Nothing in the Oklahoma Computer Crimes Act shall be construed to prohibit the monitoring of computer usage of, or the denial of computer or Internet access to, a child by a parent, legal guardian, legal custodian, or foster parent. As used in this subsection, "child" shall mean any person less than eighteen (18) years of age.

Added by Laws 1984, c. 70, § 3, emerg. eff. March 29, 1984. Amended by Laws 1989, c. 151, § 2, eff. Nov. 1, 1989; Laws 1997, c. 133, § 427, eff. July 1, 1999; Laws 2000, c. 105, § 1, eff. Nov. 1, 2000; Laws 2002, c. 97, § 2, emerg. eff. April 17, 2002; Laws 2013, c. 66, § 1, eff. Nov. 1, 2013.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 427 from July 1, 1998, to July 1, 1999.

§21-1954. Certain acts as prima facie evidence of violation of act.

Proof that any person has accessed, damaged, disrupted, deleted, modified, altered, destroyed, caused to be accessed, copied, disclosed or taken possession of a computer, computer system, computer network or any other property, or has attempted to perform any of these enumerated acts without authorization or exceeding the limits of authorization, shall be prima facie evidence of the willful violation of the Oklahoma Computer Crimes Act.

Added by Laws 1984, c. 70, § 4, emerg. eff. March 29, 1984. Amended by Laws 1989, c. 151, § 3, eff. Nov. 1, 1989.

§21-1955. Penalties - Civil actions.

A. Upon conviction of a felony under the provisions of the Oklahoma Computer Crimes Act, punishment shall be by a fine of not less than Five Thousand Dollars (\$5,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or by confinement in the State Penitentiary for a term of not more than ten (10) years, or by both such fine and imprisonment.

B. Upon conviction of a misdemeanor under the provisions of the Oklahoma Computer Crimes Act, punishment shall be by a fine of not more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both such fine and imprisonment.

C. In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program or data may bring a civil action against any person convicted of a violation of the Oklahoma Computer Crimes Act for compensatory damages, including any victim expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system,

computer network, computer program or data was or was not altered, damaged, deleted, disrupted or destroyed by the access. In any action brought pursuant to this subsection the court may award reasonable attorneys fees to the prevailing party.

Added by Laws 1984, c. 70, § 5, emerg. eff. March 29, 1984. Amended by Laws 1989, c. 151, § 4, eff. Nov. 1, 1989; Laws 1997, c. 133, § 428, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 312, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 428 from July 1, 1998, to July 1, 1999.

§21-1957. Access of computer, computer system or computer network in one jurisdiction from another jurisdiction - Bringing of action.

For purposes of bringing a civil or a criminal action pursuant to the Oklahoma Computer Crimes Act, a person who causes, by any means, the access of a computer, computer system or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system or computer network in each jurisdiction.

Added by Laws 1989, c. 151, § 5, eff. Nov. 1, 1989. Amended by Laws 2002, c. 97, § 3, emerg. eff. April 17, 2002.

§21-1958. Access to computers, computer systems and computer networks prohibited for certain purposes - Penalty.

No person shall communicate with, store data in, or retrieve data from a computer system or computer network for the purpose of using such access to violate any of the provisions of the Oklahoma Statutes.

Any person convicted of violating the provisions of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for a term of not more than five (5) years, or by a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such imprisonment and fine.

Added by Laws 1986, c. 26, § 1, eff. Nov. 1, 1986. Renumbered from § 1124 of this title by Laws 1989, c. 151, § 6, eff. Nov. 1, 1989.

Amended by Laws 1997, c. 133, § 429, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 313, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 429 from July 1, 1998, to July 1, 1999.

§21-1959. Subpoenas prior to commencement of proceedings - Noncompliance - Misdemeanor.

A. When any person has engaged in, is engaged in, or is attempting or conspiring to engage in any conduct constituting a violation of any of the provisions of Section 1953 of Title 21 of the Oklahoma Statutes, the Oklahoma Attorney General or any district attorney in Oklahoma may conduct an investigation of the activity. On approval of the district judge, the Attorney General or district attorney, in accordance with the provisions of Section 258 of Title

22 of the Oklahoma Statutes and pursuant to the provisions of the Oklahoma Computer Crimes Act, is authorized before the commencement of any civil or criminal proceeding to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any business papers or records by subpoena duces tecum. Evidence collected pursuant to this section shall not be admissible in any civil proceeding.

B. Any business papers and records subpoenaed by the Attorney General or district attorney shall be available for examination by the person who produced the material or by any duly authorized representative of the person. Transcripts of oral testimony shall be available for examination by the person who produced such testimony and their counsel.

Except as otherwise provided for in this section, no business papers, records, or transcripts or oral testimony, or copies of it, subpoenaed by the Attorney General or district attorney shall be available for examination by an individual other than another law enforcement official without the consent of the person who produced the business papers, records or transcript.

C. All persons served with a subpoena by the Attorney General or district attorney pursuant to the provisions of the Oklahoma Computer Crimes Act shall be paid the same fees and mileage as paid witnesses in the courts of this state.

D. No person shall, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the Attorney General or district attorney pursuant to the provisions of this section, knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any business papers or records that are the subject of the subpoena duces tecum.

E. Any person violating the provisions of this section shall be guilty, upon conviction, of a misdemeanor.

Added by Laws 2003, c. 98, § 1, eff. Nov. 1, 2003.

§21-1975. Definitions.

A. As used in this act:

1. "Sound recording" and "article" means a phonograph record, disc, tape, film, audio or video cassette, compact video disc, or other material now known or later developed on which sounds or images are or can be recorded or otherwise stored;

2. "Owner" means the owner of the master sound recording and, with respect to Section 4 of this act, shall mean the owner of the rights to record or authorize the recording of any performance not yet fixed in a tangible medium of expression;

3. "Manufacturer" means the entity authorizing the duplication of the specific recording in question, but shall not include the manufacturer of the cartridge or casing which encloses the recording or the manufacturer of the recording medium;

4. "Counterfeit label" means an identifying label, markings

serving the purpose of a label, or container that appears to be genuine but is not genuine;

5. "Audiovisual work" means a series of related images intended to be shown through the use of mechanical or electronic devices, together with accompanying sounds, if any; and

6. "Motion picture" means an audiovisual work consisting of a series of images which, when shown in succession, impart an impression of motion together with accompanying sounds, if any.

B. This act shall not apply to player piano tapes or rolls or the sound occasioned by the use thereof on player pianos, nor shall this act apply to any person engaged in radio, cable television, or television broadcasting who transfers, or causes to be transferred, any such sounds, other than from the sound track of a motion picture, intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes.

Added by Laws 1991, c. 82, § 1, emerg. eff. April 18, 1991.

§21-1976. Unlawful reproduction for sale of sound recording or audiovisual work - Exemptions - Penalties.

A. It shall be unlawful for any person to knowingly reproduce for sale any sound recording produced without the written consent of the owner of the original recording, provided, however, that this section shall only apply to sound recordings initially fixed prior to February 15, 1972, and shall not apply to motion pictures or other audiovisual works.

B. A violation of this section involving less than one hundred articles shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A violation of this section involving one hundred or more articles shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the State Penitentiary for a term not to exceed five (5) years, or both such fine and imprisonment.

D. A second or subsequent conviction for a violation of this section shall constitute a felony and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00), or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

Added by Laws 1991, c. 82, § 2, emerg. eff. April 18, 1991. Amended by Laws 1997, c. 133, § 430, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 314, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 430 from July 1, 1998, to July 1, 1999.

§21-1977. Unlawful sale or offer for sale of sound recording - Penalties.

A. It shall be unlawful for any person to knowingly sell or

offer for sale any sound recording that has been produced or reproduced in violation of the provisions of Sections 1975 through 1981 of this title, knowing, or having reasonable grounds to know, that the sounds or images thereon have been produced or reproduced without the consent of the owner.

B. A violation of this section involving less than one hundred articles shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A violation of this section involving one hundred or more articles shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent conviction for a violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00), or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

Added by Laws 1991, c. 82, § 3, emerg. eff. April 18, 1991. Amended by Laws 1997, c. 133, § 431, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 315, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 431 from July 1, 1998, to July 1, 1999.

§21-1978. Unlawful transfer of article or sound recording or performance for unauthorized sale - Penalties.

A. It shall be unlawful for any person to knowingly and without the written consent of the owner, transfer or cause to be transferred to any article or sound recording or otherwise reproduce for sale, any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or used to promote the sale of any article or product.

B. A violation of this section involving less than one hundred articles shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A violation of this section involving one hundred or more articles shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent conviction for a violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00) or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both

such fine and imprisonment.

Added by Laws 1991, c. 82, § 4, emerg. eff. April 18, 1991. Amended by Laws 1997, c. 133, § 432, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 316, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 432 from July 1, 1998, to July 1, 1999.

§21-1979. Advertisement, rental, sale, resale, distribution or circulation of article without actual true name and address of manufacturer - Penalties.

A. It shall be unlawful for any person to advertise, or offer for rental, sale, resale, distribution or circulation, or rent, sell, resell, distribute or circulate, or cause to be sold, resold, distributed or circulated, or possess for such purposes any article, which does not clearly and conspicuously display thereon in clearly readable print the actual true name and address of the manufacturer thereof.

B. A violation of this section involving less than seven articles upon which motion pictures or other audiovisual works are recorded or less than one hundred other articles or sound recordings, shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A violation of this section involving seven or more articles upon which motion pictures or other audiovisual works are recorded or one hundred or more other articles or sound recordings, shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent conviction for a violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00) or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

Added by Laws 1991, c. 82, § 5, emerg. eff. April 18, 1991. Amended by Laws 1997, c. 133, § 433, eff. July 1, 1999; Laws 1999, 1st Ex. Sess., c. 5, § 317, eff. July 1, 1999; Laws 2007, c. 4, § 1, eff. Nov. 1, 2007.

NOTE: Laws 1998, 1st Ex. Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 433 from July 1, 1998, to July 1, 1999.

§21-1980. Counterfeit labels - Penalties.

A. It shall be unlawful for any person to make, manufacture, sell, distribute, offer for sale, issue or place in circulation or knowingly have in his possession for purposes of commercial advantage or private financial gain, a counterfeit label affixed or designed to be affixed to a phonorecord, a copy of a motion picture or other audiovisual work, recording or article.

B. A violation of this section involving less than seven articles upon which motion pictures or other audiovisual works are recorded or less than one hundred other articles or sound recordings, shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A violation of this section involving seven or more articles upon which motion pictures or other audiovisual works are recorded or one hundred or more other articles or sound recordings, shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent conviction for a violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00) or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

Added by Laws 1991, c. 82, § 6, emerg. eff. April 18, 1991. Amended by Laws 1997, c. 133, § 434, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 318, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 434 from July 1, 1998, to July 1, 1999.

§21-1981. Confiscation, preservation and disposition of sound recording or article and implements, devices and equipment used in unauthorized manufacture.

A. If a person is convicted of any violation of this act, the court in its judgment of conviction shall order the forfeiture and destruction or other disposition of any sound recording or article which does not conform to the requirements of this act and all implements, devices and equipment used or intended to be used in the manufacture of such sound recordings or articles. The court may enter an order preserving any such articles or items for use in other cases or pending the final determination of an appeal.

B. It shall be the duty of all law enforcement officers, upon discovery, to confiscate all recordings and articles that do not conform to the requirements of this act. The nonconforming recordings and articles shall be delivered to the district attorney of the county in which the confiscation was made, who shall, by court order, destroy or otherwise dispose of such recordings and articles. This section shall apply to any nonconforming recording or article, regardless of the knowledge or intent of the person in possession.

C. The penalties provided in this act are not exclusive and are in addition to any other penalties provided by law.

Added by Laws 1991, c. 82, § 7, emerg. eff. April 18, 1991.

§21-1990. Short title.

This act shall be known and may be cited as the "Trademark Anti-Counterfeiting Act".

Added by Laws 1999, c. 54, § 1, eff. July 1, 1999.

§21-1990.1. Definitions.

For the purposes of this act:

1. "Counterfeit mark" means:

a. any unauthorized reproduction or copy of intellectual property, and

b. intellectual property that is affixed to any item that is knowingly sold, offered for sale, manufactured or distributed or to any identifying services offered or rendered without the authority of the intellectual property owner;

2. "Intellectual property" means any trademark, service mark, trade name, label, term, device, design or word that is adopted or used by a person to identify that person's goods or services; and

3. "Retail value" means:

a. for items that bear a counterfeit mark and that are components of a finished product, the counterfeiter's regular selling price of the finished product on or in which the component would be utilized, or

b. for all other items that bear a counterfeit mark or services that are identified by a counterfeit mark, the counterfeiter's regular selling price for those items or services.

Added by Laws 1999, c. 54, § 2, eff. July 1, 1999.

§21-1990.2. Use, possession, distribution, manufacture, etc. of item bearing counterfeit mark - Penalties - Seizure and forfeiture - Civil actions - Damages and attorney fees.

A. Except as provided in subsections B and C of this section, a person who knowingly and with intent to sell or distribute, uses, displays, advertises, distributes, offers for sale, sells or possesses any item that bears a counterfeit mark or any service that is identified by a counterfeit mark shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one (1) year or by a fine not exceeding One Thousand Dollars (\$1,000.00) or by both such fine and imprisonment.

B. Any person who commits any prohibited act proscribed in subsection A of this section shall, upon conviction, be guilty of a Schedule G felony punishable as provided in the state's sentencing matrix, or by a fine of not more than the retail value of such items or services or both such fine and imprisonment, if either:

1. The person has one previous conviction under any provision of this section; or

2. At least one of the following exists:

a. the violation involves more than one hundred but fewer

than one thousand items that bear the counterfeit mark,
or

- b. the total retail value of all of the items or services that bear or are identified by the counterfeit mark is more than One Thousand Dollars (\$1,000.00) but less than Ten Thousand Dollars (\$10,000.00).

C. Any person who knowingly manufactures or produces with intent to sell or distribute any item that bears a counterfeit mark or any service that is identified by a counterfeit mark shall, upon conviction, be guilty of a Schedule F felony punishable as provided in the state's sentencing matrix, or by a fine not exceeding three times the retail value of such items or services, or by both such fine and imprisonment.

D. Any person who commits any prohibited act proscribed by subsection A of this section shall, upon conviction, be guilty of a Schedule E felony punishable as provided in the state's sentencing matrix, or by a fine not exceeding three times the retail value of such items or services, or by both such fine and imprisonment if either:

1. The person has two or more previous convictions under this section; or
2. At least one of the following exists:
 - a. the violation involves at least one thousand items that bear the counterfeit mark, or
 - b. the total retail value of all of the items or services that bear or are identified by the counterfeit mark is at least Ten Thousand Dollars (\$10,000.00).

E. For purposes of this section, any person who knowingly has possession, custody or control of at least twenty-six items that bear a counterfeit mark is presumed to possess the items with intent to sell or distribute the items.

F. In any criminal proceeding in which a person is convicted of a violation of any provision of this section, the court may order the convicted person to pay restitution to the intellectual property owner in addition to any other provision allowed by law.

G. The investigating law enforcement officer may seize any item that bears a counterfeit mark and all other personal property that is employed or used in connection with a violation of this section, including any items, objects, tools, machines, equipment, instrumentalities or vehicles. All personal property seized pursuant to this section shall be subject to forfeiture according to Section 1738 of Title 21 of the Oklahoma Statutes.

H. After a forfeiture has been ordered by the district court, a law enforcement officer shall destroy all seized items that bear a counterfeit mark; however, if the counterfeit mark is removed from the seized items, the intellectual property owner may recommend to the court that the seized items be donated to a charitable organization.

I. Any certificate of registration of any intellectual property

pursuant to state or federal law is prima facie evidence of the facts stated in the certificate of registration and may be used at trial.

J. In addition to other remedies allowed by law, an intellectual property owner who sustains a loss as a result of any violation of this section may file a civil action against the defendant for recovery of up to treble damages and the costs of the suit including reasonable attorney fees.

K. The remedies provided in this section are cumulative to all other civil and criminal remedies provided by law.

L. For the purposes of this section, the quantity or retail value of items or services includes the aggregate quantity or retail value of all items that the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses and that bear a counterfeit mark or that are identified by a counterfeit mark. Added by Laws 1999, c. 54, § 3, eff. July 1, 1999.