

Cherokee Nation Code Annotated

Title 21: Crimes and Punishments

Part VII. Crimes Against Property

Chapter 70: Other Offenses Against Property Rights

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

Cite as: 21 CNCA § 1990.2

A. Except as provided in subsections Band 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 for a term not to exceed one (1) year or by a fine not to exceed 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 felony punishable by a term of imprisonment not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), 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 felony punishable by a term of imprisonment not to exceed three (3) years, or by a fine not to exceed three times the retail value of such items or services, or by both such fine and imprisonment. Such fine shall not exceed Fifteen Thousand Dollars (\$15,000.00).

D. Any person who commits any prohibited act proscribed by subsection A of this section shall, upon conviction, be guilty of a felony punishable by a term of imprisonment not to exceed three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), 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 21 CNCA § 1738.
- 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 tribal, 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.

Historical Data

LA 36-21, eff. August 12, 2021.