

109TH CONGRESS
1ST SESSION

H. R. 1201

To amend the Federal Trade Commission Act to provide that the advertising or sale of a mislabeled copy-protected music disc is an unfair method of competition and an unfair and deceptive act or practice, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2005

Mr. BOUCHER (for himself, Mr. DOOLITTLE, and Mr. BARTON of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Federal Trade Commission Act to provide that the advertising or sale of a mislabeled copy-protected music disc is an unfair method of competition and an unfair and deceptive act or practice, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Digital Media Con-
5 sumers’ Rights Act of 2005”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The limited introduction into commerce of
4 “copy-protected compact discs” has caused con-
5 sumer confusion and placed increased, unwarranted
6 burdens on retailers, consumer electronics manufac-
7 turers, and personal computer manufacturers re-
8 sponding to consumer complaints, conditions which
9 will worsen as larger numbers of such discs are in-
10 troduced into commerce.

11 (2) Recording companies introducing new forms
12 of copy protection should have the freedom to inno-
13 vate, but should also be responsible for providing
14 adequate notice to consumers about restrictions on
15 the playability and recordability of “copy-protected
16 compact discs”.

17 (3) The Federal Trade Commission should be
18 empowered and directed to ensure the adequate la-
19 beling of prerecorded digital music disc products.

20 **SEC. 3. INADEQUATELY LABELED COPY-PROTECTED COM-**
21 **PACT DISCS.**

22 The Federal Trade Commission Act (15 U.S.C. 41
23 et seq.) is amended by inserting after section 24 the fol-
24 lowing new section:

1 **“SEC. 24A. INADEQUATELY LABELED COPY-PROTECTED**
2 **COMPACT DISCS.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) The term ‘Commission’ means the Federal
5 Trade Commission.

6 “(2) The term ‘audio compact disc’ means a
7 substrate packaged as a commercial prerecorded
8 audio product, containing a sound recording or re-
9 cordings, that conforms to all specifications and re-
10 quirements for Red Book Audio and bears a duly li-
11 censed and authorized ‘Compact disc Digital Audio’
12 logo.

13 “(3) The term ‘prerecorded digital music disc
14 product’ means a commercial audio product com-
15 prised of a substrate in the form of a disc in which
16 is recorded a sound recording or sound recordings
17 generally in accordance with Red Book Audio speci-
18 fications but that does not conform to all licensed
19 requirements for Red Book Audio: *Provided*, That a
20 substrate containing a prerecorded sound recording
21 that conforms to the licensing requirements applica-
22 ble to a DVD-Audio disc or a Super Audio Compact
23 Disc is not a prerecorded digital music disc product.

24 “(4) The term ‘Red Book Audio’ means audio
25 data digitized at 44,100 samples per second (44.1
26 kHz) with a range of 65,536 possible values as de-

1 fined in the ‘Compact Disc-Digital Audio System
2 Description’ (first published in 1980 by Philips N.V.
3 and Sony Corporation, as updated from time to
4 time).

5 “(b) PROHIBITED ACTS.—

6 “(1) The introduction into commerce, sale, of-
7 fering for sale, or advertising for sale of a
8 prerecorded digital music disc product which is mis-
9 labeled or falsely or deceptively advertised or
10 invoiced, within the meaning of this section or any
11 rules or regulations prescribed by the Commission
12 pursuant to subsection (d), is unlawful and shall be
13 deemed an unfair method of competition and an un-
14 fair and deceptive act or practice in commerce under
15 section 5(a)(1).

16 “(2) Prior to the time a prerecorded digital
17 music disc product is sold and delivered to the ulti-
18 mate consumer, it shall be unlawful to remove or
19 mutilate, or cause or participate in the removal or
20 mutilation of, any label required by this section or
21 any rules or regulations prescribed by the Commis-
22 sion pursuant to subsection (d) to be affixed to such
23 prerecorded digital music disc product. Any person
24 violating this subsection shall be deemed to have en-
25 gaged in an unfair method of competition and an

1 unfair and deceptive act or practice in commerce
2 under this Act.

3 “(c) MISLABELED DISCS.—For purposes of this sec-
4 tion, a prerecorded digital music disc product shall be con-
5 sidered to be mislabeled if it—

6 “(1) bears any logo or marking which, in ac-
7 cordance with common practice, identifies it as an
8 audio compact disc;

9 “(2) fails to bear a label on the packaging in
10 which it is sold at retail in words that are prominent
11 and plainly legible on the front of the packaging
12 that—

13 “(A) it is not an audio compact disc;

14 “(B) it might not play properly in all de-
15 vices capable of playing an audio compact disc;
16 and

17 “(C) it might not be recordable on a per-
18 sonal computer or other device capable of re-
19 cording content from an audio compact disc; or

20 “(3) fails to provide the following information
21 on the packaging in which it is sold at retail in
22 words that are prominent and plainly legible—

23 “(A) any minimum recommended software
24 requirements for playback or recordability on a
25 personal computer;

1 “(B) any restrictions on the number of
2 times song files may be downloaded to the hard
3 drive of a personal computer; and

4 “(C) the applicable return policy for con-
5 sumers who find that the prerecorded digital
6 music disc product does not play properly in a
7 device capable of playing an audio compact disc.

8 “(d) RULEMAKING.—(1) The Commission may de-
9 velop such rules and regulations as it deems appropriate
10 to prevent the prohibited acts set forth in subsection (b)
11 and to require the proper labeling of prerecorded digital
12 music disc products under subsection (c).

13 “(2)(A) The Commission may develop such additional
14 rules and regulations as it deems necessary to establish
15 appropriate labeling requirements applicable to new audio
16 discs, using new playback formats (including DVD-Audio
17 discs and Super Audio Compact Discs), if the Commission
18 finds, with respect to a particular type of disc, that

19 “(i) the manner in which the discs are displayed
20 at retail, packaged, or marketed results in substan-
21 tial consumer confusion about the playability and re-
22 cordability of such discs;

23 “(ii) the discs are not appropriately labeled with
24 respect to their playability on standard audio com-
25 pact disc playback devices; and

1 “(iii)(I) the discs are not recordable on a per-
2 sonal computer; or

3 “(II) if the discs are recordable, a recording
4 made from such a disc is bound to a particular de-
5 vice.

6 “(B) To the maximum extent practicable, the Com-
7 mission shall seek to ensure that any rules and regulations
8 developed under this paragraph impose labeling require-
9 ments comparable to the requirements imposed under the
10 rules and regulations developed under paragraph (1).”.

11 **SEC. 4. REPORT TO CONGRESS.**

12 Not later than 2 years after the date of enactment
13 of this Act, the Federal Trade Commission shall submit
14 to Congress a report detailing the following:

15 (1) The extent to which prerecorded digital
16 music disc products (as defined in section 24A of
17 the Federal Trade Commission Act, as added by sec-
18 tion 3 of this Act) have entered the market over the
19 preceding 2 years.

20 (2) The extent to which the Commission has re-
21 ceived complaints from consumers about the imple-
22 mentation of return policies for consumers who find
23 that a prerecorded digital music disc product does
24 not play properly in a device capable of playing an

1 audio compact disc (as defined in section 24A of
2 such Act).

3 (3) The extent to which manufacturers and re-
4 tailers have been burdened by consumer returns of
5 devices unable to play prerecorded digital music disc
6 products.

7 (4) The number of enforcement actions taken
8 by the Commission pursuant to section 24A of such
9 Act.

10 (5) The number of convictions or settlements
11 achieved as a result of enforcement actions taken by
12 the Commission pursuant to section 24A of such
13 Act.

14 (6) Any proposed changes to this Act, with re-
15 spect to prerecorded digital music disc products,
16 that the Commission believes would enhance enforce-
17 ment, eliminate consumer confusion, or otherwise
18 address concerns raised by consumers with the Com-
19 mission.

20 **SEC. 5. FAIR USE AMENDMENTS.**

21 (a) **SCIENTIFIC RESEARCH.**—Subsections (a)(2)(A)
22 and (b)(1)(A) of section 1201 of title 17, United States
23 Code, are each amended by inserting after “title” in sub-
24 section (a)(2)(A) and after “thereof” in subsection
25 (b)(1)(A) the following: “unless the person is acting solely

1 in furtherance of scientific research into technological
2 measures”.

3 (b) FAIR USE RESTORATION.—Section 1201(c) of
4 title 17, United States Code, is amended—

5 (1) in paragraph (1), by inserting before the pe-
6 riod at the end the following: “and it is not a viola-
7 tion of this section to circumvent a technological
8 measure in order to obtain access to the work for
9 purposes of making noninfringing use of the work”;
10 and

11 (2) by adding at the end the following new
12 paragraph:

13 “(5) Except in instances of direct infringement,
14 it shall not be a violation of the Copyright Act to
15 manufacture or distribute a hardware or software
16 product capable of substantial noninfringing uses.”.

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