

1

2

COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC HEARING AND PUBLIC MEETING

4

BEFORE THE COUNCIL COMMITTEE ON
LICENSES & INSPECTIONS

5

6

- - -

Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, October 26, 1999
10:25 p.m.

8

- - -

9

10

11 BILL 960085 - An ordinance amending Chapter 9 of
12 The Philadelphia Code relating to "Regulation of
13 Businesses, Trades, and Professions," by amending
14 Chapter 9-200, entitled "Commercial Activities on
15 the Streets" and by amending various sections on
the chapter prohibiting the sale and distribution
of goods bearing counterfeit trademarks, and
providing for seizure and forfeiture of such
goods, under certain terms and conditions.

16

17 PRESENT: COUNCILMAN JAMES F. KENNEY, Chair
COUNCILMAN DAVID COHEN
18 COUNCILMAN MICHAEL A. NUTTER
COUNCILMAN FRANK DICICCO
19 COUNCILMAN DARRYL L. CLARKE
COUNCILMAN FRANK RIZZO

20

21

- - -

22

23

VINCENT VARALLO ASSOCIATES, INC.
Registered Professional Reporters
24 Eleven Penn Center, Suite 600
Philadelphia, PA 19103
25 (215) 561-2220

1 10/26/99 L&I COMM. - BILL 960085

2 I N D E X

3		
4		Page
5	Otis Haigler, Jr.	5
6	Legislative Regulatory Affairs Manager	
7	Department of Licenses and Inspections	
8	Gerald Richards, the Manager.	11
9	Business Compliance Unit	
10	Department of Licenses and Inspections	
11	M. Kelly Tillery, Esq.	22
12	Partner - Leonard, Tillery & Sciolla	

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 10/26/99 L&I COMM. - BILL 960085

2 P R O C E E D I N G S

3 COUNCILMAN KENNEY: Good morning,
4 ladies and gentlemen. This is the Council
5 Committee on Licenses and Inspections. We have a
6 quorum present, with Councilmembers Nutter, Rizzo
7 and Councilman Clarke, and myself, Chairman Jim
8 Kenney.

9 We have one bill to deal with today,
10 which is Bill No. 960085, which is an ordinance
11 amending Chapter 9 of The Philadelphia Code
12 relating to "Regulation of Businesses, Trades, and
13 Professions," by amending Chapter 9-200, entitled
14 "Commercial Activities on the Streets" and by
15 amending various sections on the chapter
16 prohibiting the sale and distribution of goods
17 bearing counterfeit trademarks, and providing for
18 seizure and forfeiture of such goods, under
19 certain terms and conditions.

20 This bill was introduced on February
21 19, '96, so it's quite old. We've had numbers of
22 discussions over the years about this issue. The
23 primary problem is that people have taken it upon
24 themselves to see basically steal copyrighted
25 trademarked material and resell it on the streets

1 10/26/99 L&I COMM. - BILL 960085

2 of our city, whether it's at a rock concert, at a
3 sporting event, or just generally out on the
4 street selling bogus and bootleg tapes and other
5 types of items.

6 Some people may argue that that is not
7 exactly a serious crime, but I would argue, in the
8 reverse, that people in the city are being ripped
9 off of the cost to trademark goods, I think that
10 escalate as a result of this theft of -- basically
11 theft of services, theft of trademarking and
12 copyright protections. The materials that are
13 often sold are of poor quality. Once the person
14 buys the poor-quality merchandise or tape or
15 video, they have no place to return it, as they
16 would in a normal established store in our city.

17 And I think, long term, our problem
18 generally is that we are attempting to attract
19 businesses to the city to establish
20 proprietorships and businesses in our
21 neighborhoods and in our downtown, and they are
22 being undercut by people who are basically
23 stealing the items, stealing the trademark, and
24 stealing the goodwill that goes along with those
25 trademarks and undercutting established stores in

1 10/26/99 L&I COMM. - BILL 960085

2 the city that employ people who pay taxes, that
3 pay property and wage and unemployment
4 compensation taxes in favor of people who are
5 outside their own store sometimes, selling that
6 exact item, which is not a legal item, for much
7 less of a cost, undercutting that business and
8 destabilizing our economy.

9 So what I'd like to do is to ask
10 Licenses and Inspections to put on the record
11 their position on this issue, and then we'll go
12 forward with Mr. Tillery, who has a short tape and
13 some testimony of his own.

14 So would you please identify yourself
15 for the record.

16 MR. OTIS: Yes. I'm Otis Haigler, Jr.,
17 Legislative Regulatory Affairs Manager for the
18 Department of Licenses and Inspections.

19 COUNCILMAN KENNEY: Please proceed.

20 MR. OTIS: Good day, Councilman Kenney
21 and members of the committee. I am Otis Haigler,
22 Jr., Legislative Regulatory Affairs Manager for
23 the Department of licenses and inspections. Today
24 I appear to provide additional testimony on Bill
25 35, which relates to the confiscation and

1 10/26/99 L&I COMM. - BILL 960085

2 forfeiture of counterfeit goods.

3 The Department has no objections to the
4 enactment of this bill because, in spirit, we are
5 already enforcing provisions of the bill under
6 other sections of The Philadelphia Code regulating
7 businesses, trades, and professions, in Chapter
8 9-200. The Department of Licenses and
9 Inspections, through its Business Compliance Unit,
10 currently enforces the provisions of Title 9.

11 Under Chapter 9-200 -- Sections 9-203,
12 Subsection 9; 9-204, Subsection 12; 9-205,
13 Subsection 9; and 9-206, Subsection 12 -- our
14 department, subsequent to inspections conducted by
15 inspectors in the Business Compliance Unit, can
16 revoke or suspend the licenses of an offender who
17 engages in deceptive businesses practices. Also
18 Sections 9-204, Subsection 12(b), and 9-206,
19 Subsection 12(b) governing sidewalk vendors in
20 Center City and sidewalk vendors in neighborhood
21 business districts respectively gives our
22 inspectors the power to confiscate stands,
23 equipment, goods, wares, merchandise, and any
24 other article or thing held for sale by any
25 licensee who uses the sidewalk or street in

1 10/26/99 L&I COMM. - BILL 960085

2 violation of this section.

3 The sale of counterfeit goods would be
4 considered a violation of Subsections 9-204c.2 and
5 9-206c.2, which deals with fraud,
6 misrepresentation, or knowingly making false
7 statements in the course of carrying on the
8 licensed activity, and the goods would be subject
9 to confiscation under those subsections.

10 Additionally, if the person is not
11 licensed, it is a moot issue because we would
12 confiscate their goods since they are operating
13 without the required license, regardless of
14 whether the items were counterfeit or not.

15 Bill 35, if enacted, will expand our
16 ability to confiscate goods outside of the Center
17 City boundaries and neighborhood business
18 districts to include the entire city.

19 We believe there is no question of
20 this, under the current requirement of the code
21 regarding our powers to enforce this bill. We
22 would like to clarify the policy of the Department
23 to enforce the provisions of the bill. Our policy
24 will be to enforce the provisions of this bill on
25 a complaint-only basis when we are accompanied by

1 10/26/99 L&I COMM. - BILL 960085

2 the manufacturer's representative, who will have
3 the responsibility for identification of the
4 counterfeit items prior to confiscation, and a
5 uniformed police officer.

6 Now, the reason for this policy is
7 twofold:

8 First, due to the manpower limitations
9 and other enforcement responsibilities of our
10 Business Compliance Unit, we need to limit the
11 number of inspections to complaints received
12 concerning counterfeit items where there is a
13 manufacturer's representative who has the
14 expertise to identify the various trademarks and
15 specifically the violations of their trademark.

16 Secondly, we will only confiscate the
17 goods in the presence of a uniformed police
18 officer. This provision is good for the
19 protection of our personnel; and also, since the
20 items in question are in violation of the
21 Pennsylvania Crimes Code, the police, at their
22 discretion, can arrest the individual. The
23 manager of our Business Compliance Unit will
24 coordinate our response to the complaint with the
25 manufacturer's representative and the police

1 10/26/99 L&I COMM. - BILL 960085

2 department.

3 Presently, the Department, on many
4 occasions such as sporting events and concerts,
5 already enforces provisions of Bill 35 regarding
6 trademark violations and the confiscation of
7 goods. Our current policy is to inspect the
8 (unintelligible) of the representatives of the
9 manufacturer, who are either U.S. marshals or
10 private detectives, who make the identification of
11 the counterfeit merchandise prior to its
12 confiscation.

13 In summary, we have cooperated in the
14 past with Mr. Tillery's organization and we will
15 continue to do so to address the concerns
16 regarding the illegal distribution of counterfeit
17 goods.

18 Thank you. I'll be happy to answer any
19 questions at this time.

20 COUNCILMAN KENNEY: Thank you very
21 much.

22 Councilman Rizzo has a question, but I
23 want to ask Mr. Tillery, after listening to the
24 gentleman's testimony that should cover some of
25 the areas that he talked about as related to the

1 10/26/99 L&I COMM. - BILL 960085

2 potential implication of legislation that's being
3 embodied in this, why you think this bill is
4 necessary as opposed to what is already in place,
5 and also talk about some of the issues relative to
6 personnel and manpower needed to do this and what
7 the industry is willing to provide to assist us in
8 that.

9 The Chair recognizes Councilman Rizzo
10 for a question of L&I at this time.

11 COUNCILMAN RIZZO: Thank you, Mr.
12 Chairman.

13 Could you please describe -- one of the
14 concerns that I have is the confiscation. Could
15 you describe presently, when L&I, in the presence
16 of the uniformed officer, confiscates 200 T-shirts
17 that are counterfeit, or videotapes, could you
18 describe how that's managed and how we know that
19 this material that's confiscated does not wind up
20 going out the back door. How does that work?

21 MR. OTIS: I have with me Mr. Gerald
22 Richards, who is the Manager of our Business
23 Compliance Unit. I would ask that he --

24 COUNCILMAN KENNEY: Mr. Richards, if
25 you could just move that chair forward so that you

1 10/26/99 L&I COMM. - BILL 960085

2 can participate in the discussion.

3 Please identify yourself for the record
4 before you proceed.

5 MR. RICHARDS: Yes. My name is Gerald
6 Richards. I'm the Manager of the Business
7 Compliance Unit of the Department of Licenses and
8 Inspections.

9 COUNCILMAN KENNEY: Did you hear
10 Councilman Rizzo's question?

11 MR. RICHARDS: I. . .

12 COUNCILMAN KENNEY: Maybe he can repeat
13 it.

14 COUNCILMAN RIZZO: Yes, I can repeat
15 it.

16 If presently L&I has the ability to
17 confiscate in the Center City district the -- any
18 person selling items without a license, you can
19 presently, even if it's legitimate things,
20 confiscate it. And if it's not, you can also
21 confiscate it and you want to broaden this. Your
22 L&I people go to a particular table, and in the
23 presence of a uniformed officer, confiscate 100
24 videos, 200 T-shirts and other unlicensed
25 materials where the person doesn't have a license

1 10/26/99 L&I COMM. - BILL 960085

2 -- did I do that correctly, that scenario?

3 MR. RICHARDS: That's correct.

4 COUNCILMAN RIZZO: What do you do with
5 all of these goodies?

6 MR. RICHARDS: Okay. Presently, we
7 store them. We have a warehouse in South
8 Philadelphia. And, periodically, we just destroy
9 them and take them right to the incinerator and
10 get people from our Clean and Seal Unit of
11 Licenses and Inspections, with big trucks, round
12 them up, and take them in and destroy them.

13 COUNCILMAN RIZZO: But it is
14 conceivable that if there are 500, 600, 1,000
15 videotapes, are they locked up in a cage or -- how
16 do you --

17 MR. RICHARDS: Sure. This is a secure
18 warehouse that only two people have access to --
19 myself and another supervisor.

20 COUNCILMAN RIZZO: I want to address
21 the Chair for a moment.

22 It seems as though, even though it's
23 counterfeit, there's lots of kids out there that
24 would never get a legitimate licensed T-shirt.
25 Rather than destroy them, I would hope that we

1 10/26/99 L&I COMM. - BILL 960085

2 could think of a better way of utilizing this
3 stuff.

4 COUNCILMAN KENNEY: Well, part of the
5 problem is, I think -- and I come down on the
6 other side of this issue because I think this
7 stuff should be destroyed. Part of the problem
8 is, if we continue to allow, even at a giveaway,
9 these items to be flooding into the market, we're
10 still undercutting the legitimate retailer who
11 will never sell that. 'Cause if someone has a
12 bogus, say, Nike jacket, okay, and perhaps the
13 person being given it to can't afford to buy a
14 regular Nike jacket -- and that's understandable,
15 there's a lot of people in those circumstances --
16 that retailer who couldn't sell that Nike jacket,
17 the legitimate trademarked Nike jacket, won't be
18 able to sell that jacket and will still,
19 regardless of whether the illegal vendor gets the
20 benefit or not, the illegal counterfeit item is
21 still within the community. So it's still
22 undercutting a legitimate retailer.

23 I guess my concern is -- and this is
24 the reason why this is here -- is that it's very
25 difficult to run a store, to run an operation, to

1 10/26/99 L&I COMM. - BILL 960085

2 have a bricks-and-mortar type of business and
3 comply with all of the things that we require
4 people to comply with, pay all their taxes, pay
5 their employees, and try to eke out a living when
6 you have some guy who put's out a folding card
7 table with some stolen merchandise and is
8 basically undercutting you.

9 COUNCILMAN RIZZO: Well, with this
10 proposed legislation, I think that quickly this
11 problem would go away if they start confiscating
12 the materials. And my point being -- and I
13 understand where you're coming from, but it kind
14 of troubles me just to see this stuff dumped.

15 Also, what I would like to see, 'cause
16 I don't want to see a person that works for
17 government tempted by a room full of T-shirts and
18 videotapes, would -- I think there should be a
19 better plan on paper on how this material is dealt
20 with. I hear what Mr. -- What Joel's saying, but
21 I would --

22 COUNCILMAN KENNEY: Is this a bonded
23 warehouse?

24 MR. RICHARDS: Yes, it's a bonded
25 warehouse.

1 10/26/99 L&I COMM. - BILL 960085

2 COUNCILMAN KENNEY: With only access by
3 two people in L&I?

4 MR. RICHARDS: Well, the Commissioner,
5 the Deputy Commissioner of Business Regulatory
6 essentially has access, I have access, and one
7 other employee. So, if they need to go there,
8 then I'm not aware of anybody else that has access
9 to this warehouse.

10 COUNCILMAN KENNEY: I think we face
11 this same problem with the confiscation of drugs,
12 with police officers with handguns and any other
13 stolen merchandise that goes to the property
14 room. And anyone, I guess, has that temptation,
15 but the key is not to succumb to that temptation.
16 That's why we have a DA's office, I guess.

17 COUNCILMAN RIZZO: Could you just
18 describe -- and I'll finish with this last
19 question. Could you please describe the quantity
20 of merchandise that you presently confiscate from
21 either unlicensed vendors or -- how much stuff is
22 in this room?

23 MR. RICHARDS: Presently, the volume is
24 down. Four, five years ago, before a lot of the
25 new legislation establishing these districts and

1 10/26/99 L&I COMM. - BILL 960085

2 regulations, it was a massive body. Right now,
3 it's not much, it's not much. You might
4 confiscate regularly every two weeks or so.

5 So it's not -- we're not talking about
6 a massive amount of merchandise and materials
7 stored at this location at any one time.

8 COUNCILMAN RIZZO: Thank you. Thank
9 you, Mr. Chairman.

10 COUNCILMAN KENNEY: Thank you.

11 Councilmember Clarke?

12 COUNCILMAN CLARKE: Thank you, Mr.
13 Chair.

14 In your testimony, you indicate that
15 you enforce this on a complaint-only basis. Could
16 you elaborate on that? What's the process -- a
17 phone call, a written complaint? Where does the
18 complaint go to -- to the police, to L&I?

19 MR. OTIS: We would be responsible to
20 respond on a complaint-only basis. And my
21 testimony -- our policy would be to respond on the
22 complaint-only basis, and that would be on the
23 basis of the manufacturer or their representative
24 giving us a call, sending in some documentation as
25 to the fact that there are counterfeit goods being

1 10/26/99 L&I COMM. - BILL 960085

2 sold on the sidewalk in violation of the bill.

3 We would respond with our inspectors,
4 with Mr. Richards' office coordinating the
5 response with the police department as well as the
6 manufacturer's representative to go out. And the
7 manufacturer's representative would identify the
8 goods for us, and Mr. Richards would enforce the
9 provisions of the bill.

10 COUNCILMAN CLARKE: So is that only
11 from the manufacturer? Because I've seen in the
12 past, talking to Mr. Richards on several
13 occasions, a store owner thought somebody was
14 selling goods. Is that a part of the process?

15 MR. RICHARDS: Well, we would
16 anticipate that it would be a two-way process. If
17 we got a complaint from a citizen, then we would
18 contact the necessary representative to verify
19 that it is, in fact, a counterfeit item before we
20 would respond. I mean, as far as enforcing it.

21 If a store owner calls and says, We
22 have a vendor outside of my location that's
23 selling counterfeit goods, then I will contact the
24 manufacturer's representative and anybody else
25 involved in that and say, I received this

1 10/26/99 L&I COMM. - BILL 960085

2 complaint, could you verify this for us? And once
3 that happens, we would take action. And, of
4 course, he has people out in the street who are
5 working this all the time, so they would also
6 contact us.

7 COUNCILMAN CLARKE: Thank you.

8 COUNCILMAN KENNEY: Councilman Nutter?

9 COUNCILMAN NUTTER: Thank you, Mr.
10 Chairman.

11 I think the only real question I have
12 about this is, how can you or anyone determine
13 what is, in fact, either a counterfeit, a
14 reproduction, a copy, or a colorful variation?
15 How do determine that?

16 MR. RICHARDS: We don't. That's the
17 purpose of having bonded identifiers for us. They
18 would supply us with the documentation that we
19 would use as our backup for the confiscation. But
20 right now, we don't. I mean. . .

21 COUNCILMAN NUTTER: All right. And who
22 is this bonded agent, and what's the nature of
23 their relationship with us, the government?

24 MR. RICHARDS: Well, I work personally
25 with Mr. Tillery and several -- a couple of other

1 10/26/99 L&I COMM. - BILL 960085

2 agencies that I don't know right offhand. And
3 basically, right now, there's just a complaint
4 issued, and the complaint comes to us and says
5 Well, we know of people who are selling
6 counterfeit items, could you verify that for us?

7 COUNCILMAN NUTTER: Mm-hmm, thank you.

8 And didn't I read somewhere recently
9 where -- and this might be a touchy subject, but
10 didn't I read a story somewhere recently, two
11 weeks ago or so, where the NFL sent people to
12 Philadelphia to make sure that, I guess, bars and
13 other locations were not inappropriately, I guess,
14 receiving a signal that they weren't supposed to
15 receive?

16 What happened in that situation? Did
17 we have any involvement or jurisdiction in this
18 particular matter? Or was that strictly handled
19 by the NFL?

20 MR. RICHARDS: That was handled
21 strictly by the NFL.

22 COUNCILMAN NUTTER: Okay, all right.
23 So, as I think Councilman Clarke raised the issue,
24 somebody calls the Department and says, I believe
25 somebody outside is selling something that is in

1 10/26/99 L&I COMM. - BILL 960085

2 fact counterfeit -- or maybe it actually is. You
3 don't send someone out first, you don't
4 immediately call this agent person?

5 MR. RICHARDS: Well, we would go out
6 and check for the license in an offending
7 situation like that.

8 COUNCILMAN NUTTER: Okay.

9 MR. RICHARDS: We would go out to see
10 if they're properly licensed.

11 COUNCILMAN NUTTER: So first you would
12 go out to see if they're properly licensed.

13 MR. RICHARDS: Yes. And then we would
14 contact one of these agencies or something like
15 that.

16 COUNCILMAN NUTTER: Then the agent
17 comes out and the agent says, yes, these are, in
18 fact, counterfeit items, because I'm bonded, I
19 know my business, I'm expertly trained on all
20 this. Next what happens?

21 MR. RICHARDS: We go to the vendor
22 location identified and we can cite them on 205,
23 fraud and misrepresentation, and it's subject to
24 confiscation.

25 COUNCILMAN NUTTER: Okay. And do we

1 10/26/99 L&I COMM. - BILL 960085

2 have any particular provision -- I know there's
3 mention in here maybe of a hearing. Let's say
4 that the person who bought the goods or somehow
5 came in possession of the goods bought those goods
6 in good faith from somebody who obviously sold
7 them in bad faith. Do we try to elicit the
8 information as to where did these goods come from
9 and make any pursuit of that particular person?
10 Or does it just stay with the person who's out
11 there selling?

12 MR. RICHARDS: In the past, we've
13 worked with (inaudible) government agencies. And
14 in the past, they have made arrangements.
15 Licenses and Inspections was not directly involved
16 in that part of it, but I know that they have made
17 arrangements saying, if you tell me who the
18 suppliers are, you won't have to pay the fine.
19 (Inaudible.) It's a private agency. So I know
20 that happens. L&I is a part of it.

21 COUNCILMAN NUTTER: Okay, all right.
22 Thank you very much.

23 COUNCILMAN KENNEY: Councilman Rizzo?

24 COUNCILMAN RIZZO: Thank you.

25 Could you -- and I'll just throw this

1 10/26/99 L&I COMM. - BILL 960085

2 out at the table because I'm not sure who will
3 answer this. Could you describe, when an item is
4 licensed, if I want to get around this proposal,
5 if I want to create a T-shirt that says
6 "Philadelphia Eagles," "Philadelphia Phillies,"
7 "Philadelphia Flyers," is there a legal way that
8 I can reproduce an item and change it just enough
9 to make it legal and get around this legislation?

10 MR. TILLERY: Councilman, perhaps I
11 should answer that one.

12 COUNCILMAN KENNEY: Please identify
13 yourself for the record.

14 MR. TILLERY: I'm M. Kelly Tillery, a
15 partner from the law firm of Leonard, Tillery &
16 Sciolla, in Philadelphia. And I represent many
17 owners of famous trademarks and copyrights. I'm
18 here to testify in support of the bill.

19 You're asking me to give legal advice
20 to assist someone to break the law, or to come
21 close to it and not actually break the law. Is
22 there a way to alter a trademark so much such that
23 it is no longer a trademark violation? Yes, but
24 the question is, when you alter it that much, it
25 is no longer recognizable as the trademark and,

1 10/26/99 L&I COMM. - BILL 960085

2 therefore, not attractive to the purchaser. If it
3 is recognizable to the consuming public as the
4 trademark -- say, the Eagles or the Phillies or
5 some rock-n-roll performer -- then it is a
6 trademark violation.

7 The law test is whether or not it is a
8 colorful variation or whether or not it is
9 confusingly similar. It does not have to be
10 identical, but if it is confusing similar to the
11 average consumer, that's the test of the law that
12 applies.

13 And the problem is that if you're a
14 counterfeiter, you're trying to make it as similar
15 as possible in order to get the consumer to buy
16 it, to think that it is a legitimate good. So if
17 you're trying to get far away to make it legal,
18 you're not going to have a customer that's going
19 to buy it.

20 COUNCILMAN RIZZO: Well, that's what I
21 wanted to understand. Is there -- as what you
22 just described, there has to be a significant
23 difference which would not be attractive. So I
24 believe you've answered my question. There's not
25 just a minor modification to the Eagles' logo that

1 10/26/99 L&I COMM. - BILL 960085

2 would make it legal for a person to sell it on a
3 table.

4 MR. TILLERY: No, because it would
5 still be confusingly similar. And the kinds of
6 product we're talking about are identical, and
7 they're purposely identical. They are made by the
8 counterfeiters to be identical in order to deceive
9 the customers.

10 COUNCILMAN RIZZO: What happens if
11 Licenses and Inspections goes to a location, and
12 the vendor says, Well, this is not a duplicate of
13 what is sold by a licensed vendor? At that point,
14 how would you deal with that if it were to become
15 a dispute? Would you back away, would you move
16 forward? What would you do?

17 MR. RICHARDS: Well, presently, that's
18 what the -- the situation we would be in because
19 we are not trained agents or trained to identify
20 or to verify that something's illegal. So if
21 there's a licensee -- currently, right now, if we
22 go to a location and there's Eagles T-shirt on
23 there and somebody has made complaints that it's a
24 bootleg, I have no way of knowing that, the
25 inspector's got no way of knowing. So we go there

1 10/26/99 L&I COMM. - BILL 960085

2 strictly looking for the licensing, whether or not
3 it's a legally licensed location.

4 COUNCILMAN RIZZO: But they say -- not
5 to go on much further with this, but what if they
6 say, But, L&I, this is not a copy, you don't see a
7 trademark insignia on here, this is different than
8 theirs, you would have to rely on the bonding
9 agent? What position does that put you in if
10 you're challenged? Could you be sued? Obviously,
11 you can.

12 MR. TILLERY: Oh, absolutely,
13 absolutely, yes, yes. And that's certainty the
14 chance that the trademark or copyright owner will
15 take in making a complaint.

16 If one of my clients made a complaint
17 told and L&I that it was counterfeit and it turned
18 out not to be counterfeit, my client would be
19 exposed to a legal procedure or any other kind of
20 lawsuit for wrongfully accusing someone of
21 violating the law.

22 But I can almost guarantee that that's
23 not going to happen because my people are trained
24 and they know what's counterfeit and what's not
25 counterfeit. Do human beings make mistakes?

1 10/26/99 L&I COMM. - BILL 960085

2 Could it happen? Of course.

3 COUNCILMAN RIZZO: Thank you.

4 COUNCILMAN KENNEY: Councilmember
5 Clarke?

6 COUNCILMAN CLARKE: Thank you, Mr.
7 Chairman.

8 Mr. Tillery, I notice in some of the
9 information that was provided to this committee on
10 you and your company, it talked about software
11 piracy and other things. In parts of my district,
12 there's a larger percentage of what we may call
13 videotape piracy or T-shirt piracy.

14 I'm wondering if there's any
15 statistical data available that show that the cost
16 associated with the losses of legitimate sellers
17 of those items could be provided. I mean, is it
18 such that the legitimate businesses will
19 overwhelmingly absorb the cost of increased and
20 enhanced enforcement?

21 MR. TILLERY: It is an enormous
22 problem, Councilman, and I will show you the
23 videotape, and you will see some statistics. But
24 certainly, the Recording Industry Association of
25 America has given Councilman Kenney a support

1 10/26/99 L&I COMM. - BILL 960085

2 letter in support of this bill, as well as the
3 Motion Picture Association of America has provided
4 those statistics -- and I'll provide them to you
5 -- to show that the cost of every motion picture,
6 the cost of every CD that's put out, includes the
7 cost of policing counterfeiting both at the state
8 and local and federal levels.

9 The expense of policing counterfeiting
10 is enormous. It is continual, it is like cock
11 roaches -- you have continue to keep them away.
12 And it's a problem that's going to continue.

13 COUNCILMAN KENNEY: That was last
14 week's hearing.

15 COUNCILMAN NUTTER: Right, when we
16 talked about cockroaches.

17 MR. TILLERY: It is a problem that the
18 expense gets passed on to the consumer because
19 when you buy the legitimate videotape, you are
20 paying in part for the expenses of enforcing
21 anti-counterfeiting throughout the country. So
22 that expense is passed on.

23 COUNCILMAN CLARKE: Okay. So
24 potentially now, would you be passing on some of
25 that expense to the government for the enhanced

1 10/26/99 L&I COMM. - BILL 960085

2 enforcement?

3 MR. TILLERY: Well, in asking the
4 government to, on behalf of people who produce a
5 lot of jobs and taxes to assist them in enforcing
6 the existing federal, state, and local laws, to
7 that extent, yes. And, of course, that's the
8 nature of government -- that the government in
9 some way, has to protect itself.

10 COUNCILMAN CLARKE: Right, because we
11 have all the money.

12 MR. TILLERY: Well, let's put it this
13 way. These industries produce an enormous amount
14 of money. I'll tell you, Ricky Martin is going to
15 be in town tonight, down at the First Union
16 Center. It's a packed house of 22,000 people, and
17 the gross revenue of T-shirts and merchandising
18 sales, for which this city will get a nice chunk
19 based on taxes, could exceed \$300,000 in one
20 night. And I would also guarantee you,
21 Councilman, that there will be at least 2 or 300
22 counterfeiters outside, selling counterfeit Ricky
23 Martin T-shirts. There will be enforcement
24 efforts to stop it -- private-industry efforts,
25 and there will be no government efforts,

1 10/26/99 L&I COMM. - BILL 960085

2 unfortunately. I would hope that there will be in
3 the future.

4 But the revenue that is produced by
5 those kinds of people is -- we're going to have
6 DisneyQuest here hopefully in the future, at
7 Eighth and Market, we have a Warner Brothers
8 store, Ralph Lauren, Rolex stores, and they
9 produce an enormous amount of jobs and revenue for
10 this city, and they are citizens and taxpayers too
11 that need to be protected, and that's what we're
12 asking for here.

13 COUNCILMAN KENNEY: Just to expound on
14 what you're saying, part of the reason we're
15 moving on -- why I want to move this legislation
16 forward is not just Rick Martin and Ricky Martin's
17 production company, but it's for John Smith and
18 his wife who have a store on Chestnut Street or in
19 Manayunk or in West Philadelphia, that are trying
20 to run a legitimate bricks-and-mortar business and
21 employ people and pay taxes. Their price costs
22 of what they have to buy wholesale and the price
23 they have to sell at retail and the reputation
24 that they may unfairly achieve because of bogus
25 and inappropriate material being sold, you know,

1 10/26/99 L&I COMM. - BILL 960085

2 it just all goes on from there. And that's one of
3 the problems that we face from a small mom-and-pop
4 retail side is that they're dealing with somebody
5 who may have illegitimate items on a stand outside
6 their store, selling counterfeit material that
7 they have inside for 10, 15, 20 dollars less. I
8 mean, I don't know how our businesses can
9 continue.

10 An example I would give, which is
11 common in the City of Philadelphia, which is very
12 upsetting to me, is the theft of services from
13 cable television. I would think that the cost of
14 cable TV in this city would be much less if every
15 chip illegally in a box were not in there and
16 everybody was paying for the cost of cable
17 television service. People think that that
18 service is a commonplace, no-big-deal thing.
19 However, the people who don't have chips in their
20 boxes are paying much higher cable bills than they
21 would be if the entire universe of Philadelphians
22 were following the law.

23 So, I mean, I think when you're dealing
24 with high-end entertainers, high-end industries
25 that make a lot of money, people say, Well, what's

1 10/26/99 L&I COMM. - BILL 960085

2 the difference if we rip them off a little bit? I
3 think the principle is wrong, number one. And,
4 number two, it does affect, in the end, the local
5 business people that are trying to follow the
6 rules and do what's necessary to run their
7 business.

8 Councilmember Rizzo?

9 COUNCILMAN RIZZO: Unfortunately, these
10 hearings are to gather information so that you can
11 make an intelligent decision in voting on
12 legislation. So, occasionally, I have to ask a
13 question I might not want to ask.

14 Could you explain, other than people
15 setting up a table or working off the tailgate of
16 a truck, once this legislation passed, is this
17 going to force the unlicensed material to become
18 available in another way? Can people buy right
19 now through the Internet unlicensed materials?

20 MR. TILLERY: Yes, Councilman.
21 Unfortunately, it's like mercury; if you press it
22 here, it pops up over here. If you stop the
23 street vendors, will they flood to the flea
24 markets? Yes. Will you stop them completely?
25 Never. Is it on the Internet? Yes, absolutely.

1 10/26/99 L&I COMM. - BILL 960085

2 I'm filing three lawsuits in the next couple of
3 days against people counterfeiting software on the
4 Internet. It is rampant.

5 The street vendor problem has been a
6 problem. Traditionally in this city, it is
7 rampant. All you have to do is walk outside of
8 this building, and in five minutes, I could show
9 you any of the items here being sold on the
10 streets, and they're all illegal, it's all theft
11 of intellectual property.

12 So we are regularly permitting thieves
13 to sell stolen property on the streets of our city
14 right outside our new Convention Center, where
15 we'll have the Republicans coming in next year,
16 right outside DisneyQuest or the Warner Brothers
17 store or Polo Ralph Lauren stores. We're
18 permitting that to happen, and this bill will --
19 at least I believe -- go a long way to solve that
20 problem. Will it solve all others? No, it won't.

21 COUNCILMAN RIZZO: What concerns me --
22 and I'll address this to L&I -- is, if a person
23 has a license, a vending license, and they're
24 caught selling some unlicensed goods, other than
25 just confiscating and -- confiscating the

1 10/26/99 L&I COMM. - BILL 960085

2 materials, is their license suspended, revoked?

3 What happens to their license?

4 MR. RICHARDS: There's a procedure in
5 place that they can.

6 COUNCILMAN RIZZO: Well, it should be.

7 MR. RICHARDS: Well, if the bill is
8 passed, it would be, but our enforcement here has
9 not been (inaudible) because of our inability to
10 identify.

11 COUNCILMAN RIZZO: But if this
12 legislation passes, you're telling me that if a
13 licensed vendor is apprehended with unlicensed
14 merchandise, then their license will be suspended
15 or revoked?

16 MR. RICHARDS: I would think that would
17 have to a part of the bill.

18 COUNCILMAN KENNEY: Well, the process
19 -- what I think you're trying to say, and correct
20 me if I'm wrong, is that there is a process in
21 place now for license revocation.

22 MR. RICHARDS: Yes.

23 COUNCILMAN KENNEY: Based on all types
24 of violations.

25 MR. RICHARDS: On all violations.

1 10/26/99 L&I COMM. - BILL 960085

2 COUNCILMAN KENNEY: But there is also a
3 process that gives that individual due process to
4 appeal that. I mean, maybe it happened once, and
5 for some legitimate reason, the person was misled.
6 There's the L&I Review Board, there's other
7 processes that people go through to get a fair
8 hearing, and we need to do that before we revoke
9 any license. So it is part and parcel of what we
10 do now, and if it is one of the violations, you
11 can potentially have your license revoked.

12 COUNCILMAN RIZZO: Good. Thank you.

13 COUNCILMAN KENNEY: Mr. Tillery, would
14 you like give your testimony or do want to play
15 the video now?

16 MR. TILLERY: I'd like to say a few
17 things first. My name is M. Kelly Tillery. I'm a
18 senior partner in the Philadelphia-based law firm
19 of Leonard, Tillery & Sciolla. I'm a member of
20 the Board of Directors of the International Anti-
21 Counterfeiting Coalition, which is a trade
22 organization based in Washington D.C., on behalf
23 of about 200 owners of intellectual property --
24 various copyright attorneys and investigators.
25 I've been battling counterfeiting throughout the

1 10/26/99 L&I COMM. - BILL 960085

2 United States and in the world for twenty years.

3 I'm a frequent author and lecturer on this topic.

4 I've given Councilmembers materials in
5 a folder regarding statistics and information
6 regarding counterfeiting around the country, and
7 more particularly, regarding street vendors, which
8 Bill 35 is going to address.

9 Before I show a brief videotape from
10 the International Anti-Counterfeiting Coalition, I
11 guess I want to address a question of Councilman
12 Rizzo regarding the donation of these items. One
13 item I'd like you to be aware of is that much of
14 the counterfeit items -- not necessarily all of
15 them, Councilman -- are very dangerous. The items
16 I have before you here are -- the T-shirts are
17 extremely flammable and dangerous, and I would
18 hate to see the City of Philadelphia donate
19 dangerous items to poor children who are cold and
20 need a shirt, and I would hate to see them be
21 injured by them. In addition, many of these items
22 are for small children and are not in accord with
23 consumer protection standards. They break off,
24 they're -- little children can swallow them, the
25 sun glasses shatter. Most of the counterfeit

1 10/26/99 L&I COMM. - BILL 960085

2 goods are seriously inferior products. And if we
3 were to donate those inferior products to children
4 in the community, you might have some serious
5 injuries as a result of that. And so I would hate
6 to see that happen.

7 But I would like to show you a video
8 made by the IACC. It's about seven minutes and
9 will give you some ideas about counterfeiting.

10 (IACC videotape shown.)

11 MR. TILLERY: Thank you, Mr. Chairman.

12 COUNCILMAN KENNEY: Please proceed with
13 your testimony.

14 MR. TILLERY: As you can see,
15 Councilmembers, the issue here is one of public
16 safety, it's one of consumer protection, it's one
17 of protecting your tax base, it's one of
18 protecting jobs, it's one of protecting big
19 business as well as small business, and a variety
20 of people. And yet it's also an issue for this
21 city, I believe, one of image and integrity, and
22 that should we continue to permit what are
23 thieves, and that these people are selling stolen
24 property on the streets of our city with impunity,
25 especially in the face of us trying to become, and

1 10/26/99 L&I COMM. - BILL 960085

2 in fact, maybe we are now a world-class city and a
3 world-class destination city, should we continue
4 to permit that.

5 I believe, Councilman Kenney has
6 received, and perhaps some of you have received as
7 well, support letters for this bill from many,
8 many companies, including the International
9 Anti-Counterfeiting Coalition, the Recording
10 Industry Association of America, the Motion
11 Picture Association of America, Nike, Fubu,
12 Adidas, Tommy Hilfiger, Warner Brothers, Disney,
13 the NBA, Children's Television Workshop,
14 Teletubbies, Nautica, Winterland, Nintendo, and
15 perhaps many others.

16 The samples that I have before me here
17 were purchased in a variety of places, but each
18 and every one of them are available within
19 probably about a 10-, 15-minute walk of this
20 hearing chamber. They're all counterfeit, and
21 many of them are, in fact, dangerous. So, as I
22 said, it is a consumer protection issue as well.

23 As far as how this bill will operate,
24 I'm delighted to hear from L&I this year that L&I
25 takes the position that the current law which

1 10/26/99 L&I COMM. - BILL 960085

2 prevents the sale of goods that misrepresent and
3 commit fraud on the streets of Philadelphia, that
4 they have the power to confiscate those. There
5 was a time when L&I did not take that position,
6 and that really was the genesis of this bill, is
7 that L&I took the position that the provision of
8 the law was not entirely clear that it would
9 address trademark counterfeiting, and that was the
10 genesis of this bill, which does make it
11 specifically clear, that it addresses that. And
12 as the members from L&I have testified, it acts on
13 a complaint basis; that is, if one of my clients
14 or other people in the industry observed a problem
15 on the streets of Philadelphia, we would inform in
16 writing the Department of L&I of the problem and
17 of the locations, and we would take the onus of
18 identifying for them the specific goods that were
19 counterfeit, and we would stand behind that and
20 testify at any hearing procedure if necessary.

21 And I believe this will go a long way
22 in cleaning up the streets of Philadelphia. We
23 have a lot of great law-abiding street vendors out
24 there who can millions and millions of dollars of
25 legitimate goods, and God bless them, I wish them

1 10/26/99 L&I COMM. - BILL 960085

2 the best, but right now, they're selling a lot of
3 counterfeits, so if they clean it up, we can have
4 people out there who can make money and pay taxes
5 and support the city.

6 Thank you very much.

7 COUNCILMAN KENNEY: Thank you.

8 Councilmember Clarke?

9 COUNCILMAN CLARKE: Mr. Tillery. Mr.
10 Tillery?

11 MR. TILLERY: Yes?

12 COUNCILMAN CLARKE: What efforts are
13 being taken by the industry to get a handle on the
14 manufacturer of all of these various goods? I
15 mean, are you putting a similar emphasis on that?

16 MR. TILLERY: Absolutely, absolutely,
17 Councilman. We make every effort. It's just like
18 the drug trade, I suppose. The little guy leads
19 you up to the bigger guys -- the manufacturer, the
20 distributor, and the importer. We try certainly,
21 if for no other reason, for purposes of economics,
22 to get the bigger guys. And there is an ongoing
23 effort to do that. We have investigators
24 throughout the world and throughout the country to
25 do that, to shut down manufacturing plants, to

1 10/26/99 L&I COMM. - BILL 960085

2 shut down distributors. We have a Customs
3 program. Customs works very closely with us to
4 prevent the importation of trademarked goods.

5 Many of these goods are imported
6 without the trademarks on them and then the
7 trademarks are affixed here. On North Fifth
8 Street, unfortunately, in this city, is a haven
9 for businesses who regularly do that. They import
10 goods from the Far East or the Mid East --
11 inexpensive T-shirts, sweatshirts, and caps and
12 things like that. And so when they get in the
13 country, they don't have the trademarks on them
14 and they pass through Customs and get in here and
15 go into factories and sweat shops in locations
16 around the city or in New York, L.A., and then the
17 trademarks are affixed there.

18 So it is an underground business. The
19 people who do it know that it is illegal;
20 therefore, they take great efforts to hide it. So
21 it is a never-ending battle. But we do, in fact,
22 focus on efforts on getting the larger
23 distributors and manufacturers.

24 COUNCILMAN CLARKE: What arm of
25 government do you work with on that?

1 10/26/99 L&I COMM. - BILL 960085

2 MR. TILLERY: We work with both the
3 United States government, the Department of
4 Justice, who has just actually publicized a new
5 initiative to work with all aspects of law
6 enforcement to enforce the federal trademark and
7 copyright laws, and there are both civil and
8 criminal law at that level, as well as state
9 government.

10 In the last five years, at least
11 fifteen states have increased the penalties for
12 trademark counterfeiting from misdemeanor status
13 to felony status. And, in fact, this state has
14 done that as well. A couple years ago, we were
15 successful in getting a law passed, and trademark
16 counterfeiting is now a felony in this state at a
17 certain level -- if you're a repeat offender, it's
18 a felony.

19 And we have found, however, that, as
20 you find in this city, that the local district
21 attorneys oftentimes are very busy, with limited
22 manpower and resources, dealing with other perhaps
23 more serious, more violent crimes. And
24 oftentimes, that makes us rely upon administrative
25 measures, such as the one we're requesting to be

1 10/26/99 L&I COMM. - BILL 960085

2 implemented here, as well as civil enforcement,
3 so we go through civil lawsuits as well.

4 But it is a panoply of weapons that we
5 use, both private and governmentally assisted.

6 COUNCILMAN CLARKE: Have you had any
7 measurable success in going after the
8 manufacturers, or is it such that you're unable to
9 target those individuals so now you feel the need
10 to deal with the lower-level seller?

11 MR. TILLERY: No. We actually have a
12 lot of success at hitting manufacturers. I mean,
13 you know, in twenty years of doing this, I have
14 ceased and shut down, you know, scores of
15 manufacturing plants and hundreds and hundreds of
16 million dollars of goods.

17 But, it is -- as I said, it's a
18 never-ending battle. If you shut down one,
19 another one pops up at another location. Because
20 it so lucrative, because people don't pay taxes,
21 there is a great incentive, unfortunately, for
22 people who are willing to break the law to do
23 this.

24 So the reason we're doing it at this
25 level is because it's still an enormous problem,

1 10/26/99 L&I COMM. - BILL 960085

2 and this is an effective, easy, economical way of
3 addressing the problem, and it's very much in the
4 interest of the people of this city to do that.

5 As Councilman Kenney said, it's not just in the
6 interest of my clients or any wealthy companies
7 who own trademarks and copyrights; it is in the
8 interest of the citizens of this city.

9 COUNCILMAN CLARKE: You mentioned
10 earlier North Fifth Street?

11 MR. TILLERY: Yes.

12 COUNCILMAN CLARKE: Is that a target?
13 Could you explain that more?

14 MR. TILLERY: Well, it just happens to
15 be a location -- I can't get more specific about
16 that, probably due to ongoing investigations. But
17 that area happens to be an area of sewing
18 locations, people -- where there are cut-and-sew
19 places that there have been some problems with in
20 the past and there unfortunately may be in the
21 future as well. It just happens to be an area
22 that -- just as if I would describe, there would
23 be six locations where street vendors are a
24 serious problem as well in the city, Center City
25 being one of them.

1 10/26/99 L&I COMM. - BILL 960085

2 COUNCILMAN KENNEY: We've had a couple
3 in South Philadelphia that were -- where L&I was
4 helpful with, I think, the District Attorney's
5 Office in shutting down. There were sweatshops
6 and selling operations with illegal aliens and
7 terrible conditions.

8 MR. TILLERY: And there have been some
9 in Northeast Philadelphia as well, so it's not
10 just one area of the city, unfortunately.

11 COUNCILMAN CLARKE: Okay, thank you.

12 COUNCILMAN KENNEY: Are there any other
13 questions for Mr. Tillery?

14 (No further questions.)

15 COUNCILMAN KENNEY: Thank you very much
16 for your testimony.

17 Is there anyone else here to testify on
18 this bill?

19 (No response.)

20 COUNCILMAN KENNEY: Seeing none, thank
21 you very much for your testimony.

22 MR. TILLERY: You're welcome.

23 COUNCILMAN KENNEY: That concludes the
24 public hearing of the L&I Committee.

25 - - -

1 10/26/99 L&I COMM. - PUBLIC MEETING

2 COUNCILMAN KENNEY: We will now convene
3 a public meeting, and we'll just take a one-minute
4 break until Councilman Nutter's off the phone.

5 (Pause.)

6 COUNCILMAN KENNEY: The Chair
7 recognizes Councilmember Nutter for a motion on
8 Bill No. 35, with a request for a suspension of
9 the rules.

10 COUNCILMAN NUTTER: Mr. Chairman, I
11 move that Bill No. 35 be reported out of this
12 committee with a favorable recommendation and a
13 further recommendation that the rules of Council
14 be suspended so as to permit first reading at our
15 next session.

16 COUNCILMAN KENNEY: Is there a second?

17 (Duly seconded.)

18 COUNCILMAN KENNEY: Moved and
19 seconded.

20 All in favor, aye?

21 Opposed?

22 There are none opposed. Bill No. 35
23 will be reported out of this committee favorably,
24 and an additional request will be made for a rules
25 suspension to allow for first reading at our next

1 10/26/99 L&I COMM. - PUBLIC MEETING

2 Council session.

3 Thank you all very much for your
4 attendance.

5 (Adjourned at 11:13 a.m.)

6 - - -

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

C E R T I F I C A T E

3

4

5

6

7

8

9

10

11

12

13

RE: COUNCIL COMMITTEE ON LICENSES AND INSPECTIONS

14

BILL NO. 960085

15

16

17

18

19

20

21

22

23

24

25

JOSEPHINE CARDILLO,

Registered Professional Reporter