



**Statement of the National Electrical Manufacturers Association
On H.R. 32
Stop Counterfeiting in Manufactured Goods Act**

**Oversight Hearing on
“Responding to Organized Crimes Against Manufacturers and Retailers”
March 17, 2005**

**Before the House Judiciary Committee
Subcommittee on Crime, Terrorism and Homeland Security**

March 22, 2005

The National Electrical Manufacturers Association (“NEMA”) is the leading trade association in the United States representing the interests of electroindustry manufacturers. Founded in 1926 and headquartered in Rosslyn, Virginia, NEMA’s 400 member companies manufacture products used in the generation, transmission and distribution, control, and end-use of electricity, including lighting products. Domestic shipments of electrical products within the NEMA scope exceed \$100 billion.

NEMA is pleased to be able to submit this written statement for the record in support of H.R. 32, the Stop Counterfeiting in Manufactured Goods Act. Had NEMA testified at the Subcommittee’s hearing on March 17, 2005, its testimony would have contained the remarks reflected in this written statement.

Our national laws condemning trafficking in counterfeit product, by definition, deal only with trafficking in non-genuine product. There is no competitive justification for trafficking in counterfeit product, and our national policy recognizes that. It is a long-engrained part of our national policy to prevent deception about the source and origin of products. H.R. 32 makes some important improvements to that policy, as part of our overall national strategy to promote global deterrence of counterfeiting at home and abroad.

The Interest of NEMA and its Members in H.R. 32

NEMA members have been the targets and victims of trademark counterfeiting by those persons who seek to trade on the goodwill represented by those trademarks, often by persons who have little or no regard for public safety and consumer safety. This means the public is a victim of the counterfeiter as well. Counterfeiting is not a victimless crime.

The targets of counterfeiters are not only the branded names and trademarks of NEMA members, but the targets also include the certification marks of those testing organizations who evaluate the conformity of NEMA members' products to safety standards to which those products are listed by the testing organizations, such as Underwriters Laboratories, CSA International, and other testing and certification organizations around the world. NEMA members invest significantly in producing quality products that meet the specifications and safety requirements of these testing and certification firms. Counterfeiters, on the other hand, do not make that investment in safety, yet in order to mislead the public into believing they are buying the same quality product the counterfeiter will put the certification mark of the testing organization on its product without authority or conformity. Only last year, two NEMA members discovered conduit fittings installed at a facility in the Middle East bearing not only their trademarks, but also the certification marks of both Underwriters Laboratories and CSA International. The conduit fittings carried the part number for a model intended for use in hazardous locations, and these products were installed in a hazardous location where an explosion could have been catastrophic. The reference to the model number was deceptive; the design of the counterfeit conduit fitting was not appropriate for a hazardous location and did not meet the safety standards.

NEMA is aware of counterfeit extension cords seized by US Customs bearing a member's counterfeit mark and counterfeit certification marks containing inadequate gauge wire that would catch on fire if used as the cord was intended. In 2004, counterfeit circuit breakers were blamed for not preventing fires in Cairo, Egypt. Counterfeit fuses have been found in electrical devices that would not function as a protective device.

NEMA members who manufacture dry cell batteries design their product against explosion or rupture if misinstalled by a consumer in an electronic device. Counterfeit batteries looking virtually identical to the genuine product are not always designed for safety, and under testing simulating typical use for the product can explode causing damage to the electronic device and perhaps the consumer. Counterfeit batteries have been found to contain mercury, notwithstanding the fact that U.S. law prohibits mercury in these types of batteries. Plainly, these product qualities injure the reputation and goodwill of the branded manufacturer.

The Committee can see some examples of the threat posed by some of these products at <http://www.ice.gov/graphics/cornerstone/multimedia/iprgallery.htm>

It is well known that trademark counterfeiters have exploited the brand names of highly visible consumer products, but the experience of NEMA members illustrates that consumer products are not the only targets of these criminals. Electrical products are sold to consumers, but many electrical products are sold for industrial applications, building construction, and commercial installations through commercial distribution channels. The following is a list of electrical products known to NEMA to have been targeted by counterfeiters: small electric motors, control relays, circuit breakers, fuses, receptacles, switches and lighting controls, ground fault circuit interrupters, dry cell batteries, lamps,

lamp ballasts, extension cords, surge suppressors, communications wire and cable, electrical connectors, and conduit fittings.

Both of the provisions of H.R. 32 that would amend 18 U.S.C. §2320 are important to electrical manufacturers and the public that buys and uses electrical products.

First, Section 2 of H.R. 32 would legislatively overturn the case of *United States v. Giles*, 213 F.3d 1247 (10th Cir. 2000), a case that NEMA believes must be corrected, and which NEMA believes represents bad public policy. As discussed above, the certification marks of testing organizations such as Underwriters Laboratories, CSA International and other organizations are important for both manufacturers and the public who value those marks as a measure of performance, quality and safety to the test requirements to which they relate. The certification mark is, in an important sense, the ultimate product of these organizations' standards and testing services. In some products, the certification mark is molded into the product, but in other cases it is label or tag that is affixed to the product. If a person is knowingly and intentionally engaged in making counterfeit certification labels that are capable of being applied to or used in connection with the goods for which they are registered, they should be primarily liable under this section of the criminal code, regardless of whether the labels or tags have yet to be affixed to a product. H.R. 32 addresses this very real problem.

NEMA is aware that importers of unsafe electrical products have brought unbranded product into the United States and then arranged to have counterfeit certification marks made to attach to those products after they are in the country. This ploy enables the importer to escape US Customs enforcement at the port of entry, and then illegally gives the imported product a reputation it does not deserve. This conduct goes on in other countries as well. One manufacturer of lighting products has advised NEMA that it finds more counterfeit packaging with its trademark and brand names on it than it finds counterfeit product with their name on it. Unbranded look-alike product is shipped separately from the packaging, and then matched with the counterfeit packaging in warehouses in the regions of the world where it is distributed to consumers who are misled about the origin of the product.

Section 2 of H.R. 32 improves the statute's remedial scheme. NEMA has been active in supporting our Government's advocacy to China that their criminal laws and enforcement policies must have a deterrent effect. To combat counterfeiting, the policy must be effective to deter both the supply and demand for spurious products. That policy must be a cornerstone of our statutory scheme as well. In the case of counterfeit products, there must be a "zero tolerance" policy: if the product is not genuine and it bears counterfeit marks, the product and the critical machinery that was used to make the counterfeit product must be removed from the marketplace. This policy is already embraced in our domestic copyright piracy policy. If it is not part of our trademark anticounterfeiting law, we will have an ineffective deterrent policy toward trademark counterfeiting and we will not be able to encourage our trading partners to be equally vigilant. H.R. 32's amendments relating to seizure and forfeiture remedies are important

to an effective anti-counterfeiting policy that the United States and our trading partners should be incorporating in their criminal laws. As Section 1, Subsection 7 of H.R. 32 states: “strong domestic criminal remedies against counterfeiting will permit the United States to seek stronger anticounterfeiting provisions in bilateral and international agreements with trading partners.” This is extremely important in view of the global threat that counterfeit products present to genuine brands and the public’s welfare and safety.

NEMA supports passage of H.R. 32 for these reasons. For further information about NEMA’s interest in effective anti-counterfeiting policy, please visit NEMA’s website at <http://www.nema.org/gov/anti-counterfeiting/>