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**BODY:**

May 6--BELLEFONTE -- There is a "small crisis" in Centre County stemming from a disagreement between a county judge who thinks the state's trademark counterfeit statute is unconstitutional and the District Attorney's Office, which thinks he is wrong, said Judge Thomas King Kistler.

A notice of appeal to the state Supreme Court was filed Monday by the District Attorney's Office, asking it to overturn Kistler's ruling that the law that regulates the sale of trademarks is overbroad and vague, and therefore unconstitutional.

Kistler has ruled in four cases since 2000 that the statute police use to arrest people for having counterfeit goods -- such as faux Gucci handbags, Nike sneakers and bootlegged DVDs -- also makes it illegal for anyone to reproduce any trademark. So little kids at Penn State football games with Nittany Lion stickers on their faces are in violation of the law, Kistler said. And, actually, according to Kistler, this article violates the law merely by listing the brands "Penn State," "Gucci" and "Nike."

Anyone who writes or copies and distributes a trademark in any way has broken the law, based on the current wording, Kistler ruled.

"It's obvious this is an important matter that needs to be resolved quickly," Kistler said. He said there is no doubt that there are people violating this law and making a profit on the goods, so he is urging the state Supreme Court to consolidate the two cases the District Attorney's Office has appealed and make a decision.

"The DA's Office and police officers thinking they can enforce it," Kistler said. "And me thinking I can't enforce it. That's a problem. It's chaotic."

Most of these arrests are made by troopers patrolling Interstate 80, who find garbage bags of counterfeit materials going west from New York City through the state.

Assistant District Attorney Steve Sloane sent his appeal Monday; Assistant District Attorney Karen Kuebler filed a similar appeal in January. They say the statute is neither overbroad, meaning it criminalizes legal activity, nor vague,

meaning people are confused by it.

"Are the cops out there chasing people that write 'Penn State' on paper? No," Sloane said. "Because they're not confused."

"We believe that it's common sense that it is designed and intended to cover people stealing other people's intellectual property, or brand names, or displaying with the intent to use them commercially," Sloane said.

And if their argument is that people carving "Penn State" into a tree house, or spelling out the word with flowers in a garden could be arrested, Sloane said, the attorneys for the four defendants never presented any evidence of that happening. Without that evidence, Sloane said the statute is presumed to be constitutional.

Defense attorney Karen Muir disagrees that the statute only addresses instances involving commercial gain.

"That's really funny," she said, "because the statute doesn't say that. It doesn't say 'profit.' That's not the wording of the statute."

Here is what it says: Any person who knowingly manufactures, uses, displays, advertises, distributes, offer for sale, sells or possesses with intent to sell or distribute any items or services bearing or identified by a counterfeit mark shall be guilty of the crime of trademark counterfeiting.

Public Defender Sean Mc- Graw, who like Muir represents one of the defendants in one of the cases being appealed to the state Supreme Court, said eight state representatives introduced an amendment in July intended to eliminate vague and overbroad language in the law.

"If I write Penn State on somebody's birthday cake, it's a crime under the literal wording of this statute," said Mc-Graw, who wrote "Penn State" on a T-shirt from the dollar store to demonstrate his point in court. If the statute clearly stated that it was illegal only for the purposes of making a profit, McGraw said that would narrow how the law can be applied.

Still, Sloane said he thinks Kistler erred in his ruling.

"There are 67 counties in Pennsylvania," Sloane said. "And not one of the other 66 counties have ever ruled that the statute was too broad or too vague, which you would think if it's so obvious another court would have held the same opposition."

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