

## **Intro. No. 544**

Good morning, Chairman Vallone and members of the Council. I am Kathleen McGee, Director of the Mayor's Office of Special Enforcement, and I am here to offer the Administration's comments on Intro. 544, which would make it a class A misdemeanor for someone to purchase an item containing a counterfeit trademark when they know, or should have known, that the trademark is counterfeit.

We appreciate the intent behind the bill, as an effort to attack the demand side of the problem of trademark counterfeiting. On the supply side, significant resources of my Office and the Police Department, as well as those of other government agencies and industry representatives, are devoted to investigating this form of organized crime, arresting those who distribute counterfeit goods, and seizing the offending property. The Office of Special Enforcement investigates allegations of counterfeit trademark wholesale and retail activity and, where warranted, commences nuisance abatement civil legal actions against those brick and mortar locations harboring the illegal activity. To date, OSE has closed over 40 locations, seized over \$52 million worth of contraband and collected over \$2.5 million in settlements resulting from our cases. We have initiated a landmark campaign against the self-storage locations that provide safe-harbor to counterfeiters and continue to be a best-practices model for cities worldwide in addressing counterfeit trademark activity.

The Police Department has a Trademark Infringement Unit that is unique among police departments as a unit that specifically targets trademark violations. They gather intelligence and target the manufacturers and distributors of counterfeit goods, primarily enforcing the felony Trademark Counterfeiting crimes contained in the New York State Penal Law. The Patrol resources of the Police Department are also brought to bear, focusing on unlicensed street vendors who sell counterfeit goods. Seizure of the contraband property is complemented by powerful civil remedies, such as forfeiture and nuisance abatement, to forfeit the proceeds and instrumentalities of the crime, and to shut down as public nuisances at the locations where the crimes are committed.

Notwithstanding our efforts to curb the sale of counterfeit goods, the market continues to exist, and customers continue to purchase illegal replicas of high-end merchandise and other goods. While we share the Council's frustration with consumers' misguided support of criminal enterprise, we are unable to agree with the approach taken by the bill. We are concerned that enforcement of such a prohibition could deter both New Yorkers and tourists from shopping for legitimate goods.

Rather than enacting Intro. 544, it might be worthwhile to discuss how we can work together to address the demand side of the equation through public education, stressing: the illegality of the sale; the possible funding of other illegal activity through sale, including terrorism; the inherent lack of quality of the goods; the lack of sales tax revenue needed to fund our city works; and the actual danger presented by certain types of counterfeit goods, such as children's apparel and toys, medications, auto parts, and food items.

Thank you for the opportunity to offer our thoughts on Intro. 544, and I would be pleased to answer any questions you may have.

TESTIMONY BEFORE THE NEW YORK CITY COUNCIL  
June 13, 2013

Good morning. My name is Valerie Salembier. I have been a media executive throughout my career and have run national magazines and newspapers. As the Publisher of Harper's Bazaar, I became very interested in the criminal activity tied to the counterfeit industry. Having left the media to pursue this interest, I have started a company that specializes in consumer education regarding the buying, selling and illegal activity that surrounds counterfeiting. My website, [dontbuyfakes.com](http://dontbuyfakes.com) was launched this week and I'm hoping that it spreads the word that counterfeiting is not a victimless crime. I also serve as Chair of The New York City Police Foundation and work with the NYPD's Trademark Infringement Unit in my Foundation role.

I want to thank the City Council for allowing my testimony today. I'd also like to thank City Councilwoman, Margaret Chin, for persevering in her quest to make buying counterfeit products a crime in New York City.

I'd like to begin by stating some facts about the counterfeit industry. Most importantly, counterfeiting is NOT a victimless crime. The sale of counterfeits supports egregious child labor practices, drug cartels and yes, even terrorism. And the sale of counterfeit products has fast become a serious health and safety risk. Fake pharmaceuticals, automobile parts, airline parts, fragrance and beauty products pose serious threats that I hope will influence your thinking on the legislation that is before you today.

I'd like to share some facts about counterfeiting as reported by the world's largest anticounterfeiting organization, the International Anticounterfeiting Coalition, based in Washington, D. C.<sup>1</sup> Some of these facts are, of course, abundantly clear to all of us.

- Counterfeiting is illegal and purchasing counterfeit products supports criminal activity.
- If the counterfeit economy were a business, it would be the world's largest enterprise, twice the size of Wal-Mart, its closest competitor. And the World Customs organization now estimates counterfeiting as approximately 10% of world trade.
- Counterfeiters don't pay taxes. This means that there is less money for New York City schools, hospitals, parks and other important social programs.
- In 2003, the then New York City Comptroller commissioned a research project on the counterfeit industry in New York.<sup>2</sup> The results were horrifying.

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<sup>1</sup> [www.iacc.org](http://www.iacc.org)

<sup>2</sup> *Bootleg Billions: The Impact of the Counterfeit Goods Trade on New York City*

New York State and New York City quoted the sale of counterfeit goods during 2003 at \$34 billion. New York City alone was deprived of \$1 billion in tax revenue. This was a direct result of the sale of counterfeit goods not being taxed.

- Counterfeiters do not pay their employees fair wages or benefits, have poor working conditions, and often use forced child labor.
- Counterfeit goods are made using cheap, substandard and dangerous components that put the health and safety of consumers at risk.
- Counterfeit merchandise is directly responsible for the loss of more than 750,000 American jobs.<sup>3</sup>
- The profits from counterfeiting have been linked to funding organized crime, drug trafficking and terrorist activity. As an example, the 2004 Madrid train bombings were funded by the illegal sale of counterfeit CD's and DVD's. That money was laundered through the remnants of an Al Qaeda cell formed in Spain a decade earlier. 191 innocent commuters on their way to work in Madrid were murdered as a result and 2,000 more were injured.<sup>4</sup>
- A study conducted by the Motion Picture Association of America found that their six member companies lost more than \$8 billion in sales and tax revenue in 2005. That number has grown exponentially since then.<sup>5</sup>
- From a 2012 24/7 Wall Street Report<sup>6</sup> in value order, the most counterfeited products in America are:
  - Handbags/Wallets
  - Watches/Jewelry
  - Wearing Apparel/Accessories
  - Consumer Electronics
  - Footwear
  - Pharmaceuticals/Person Care Products
  - Optical
  - Computers/Accessories
  - Labels/Tags
  - Toys

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City of New York – Office of the Comptroller, November 2004

<sup>3</sup> [www.iacc.org](http://www.iacc.org)

<sup>4</sup> Combating Terrorism Center at West Point  
[www.ctc.usma.edu](http://www.ctc.usma.edu)

March, 2012, Author Fernando Reinares

<sup>5</sup> [www.iacc.org](http://www.iacc.org)

<sup>6</sup> 24/7 Wall Street Columnist, Samuel Weigley  
[Finance.yahoo.com](http://Finance.yahoo.com), January 2013

The importing of counterfeit goods has been on the rise, showing an increase of 142% in goods seized in 2012 compared to the previous year. Of the \$511 million worth of fake handbags seized in 2012, the vast majority were made in China.<sup>7</sup> This connects back to the point I made earlier on fair wages, benefits and poor working conditions where young children are employed. Children as young as 7 or 8 years old are put to work in factories and chained to machines to have their small fingers work on assembling fake watches together. The kind of fake watches you see all over Canal Street.

I'd like to give you some examples of specific industries and brands that are being affected by counterfeiting. Although my personal focus has been in the luxury goods sector, I'd like to speak for just a minute about fake pharmaceuticals.

One example of a pharmaceutical fake is a time bomb for cancer patients. In 2012, the FDA issued an alert to doctors that a counterfeit injectable cancer drug had been distributed to clinics in the U. S. There was not one active ingredient in this fake medication.<sup>8</sup> Simply, if this drug had been prescribed for you, you would not have received any medical benefit from taking it. This should frighten all of us.

Another pharmaceutical company, Pfizer, in their efforts to slow down counterfeit Viagra, announced that consumers can now purchase this drug legally online – but only on Pfizer's authentic website and nowhere else other than from a doctor's prescription. This is a bold move for the pharmaceutical industry.

Now back to the luxury goods sector. After a long investigation, Tiffany & Company found that 73% of alleged Tiffany product sales on eBay were counterfeits.

And in the past six weeks, storefronts in downtown Los Angeles' fashion district seem to have a lot of empty shelves. That's the result of \$14 million worth of counterfeit Hermes handbags that were seized at the Los Angeles and Long Beach Ports. New York's ports deal with the same criminal activity and seizures of counterfeit goods arriving from around the world have kept our New York based Homeland Security enforcement officers very busy.<sup>9</sup>

Magazine journalist Maria Ricapito wrote in 2010 that since fragrance is absorbed by your body, you surely want to buy perfume in a legitimate store where one would expect to buy it. Patrick Bamburak, an executive at Dior Perfumes in North America said "Counterfeit fragrances have not been subjected to the quality-control tests and research on which legitimate fragrance makers spend money and time. Fake perfume has been found to contain contaminated alcohol, antifreeze, harmful bacteria and urine."<sup>10</sup> I, personally, am sure of one thing. I will not buy perfume

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<sup>7</sup> [www.latimes.com](http://www.latimes.com)

<sup>8</sup> Journal of the American Medical Association (JAMA)  
*FDA Warning: New Batch of Fake Bevacizumab Found*  
March, 2013 – Author Bridget M. Kuehn, MSJ

<sup>9</sup> LATimes.com

<sup>10</sup> Harper's Bazaar Magazine

on Mott Street. Lord&Taylor or any department store is a far better bet and I know I'll be getting the real thing there.

France has been the world leader in counterfeiting law enforcement. Italy, now and finally, has taken the same hard stance. If you are caught either BUYING or CARRYING a fake in France, you can be arrested and you will receive a fine of up to 360,000 Euro. It's working in France. Making purchasers understand that buying a counterfeit is illegal, definitely creates an attitude shift .

There is no question that passing this legislation will act as a deterrent to those people who come to Chinatown solely to buy fakes. Chinatown used to be a destination for wonderful Chinese culture, Chinese food and Chinese community events. Today Chinatown is a destination for people around the world who come to New York City to purchase counterfeit goods.

**When someone buys a fake, they become part of the cycle of counterfeiting and their money directly supports illegal activity.**

**I urge you to pass this legislation. If we don't send a clear message to the end user – the person who actually buys the counterfeit product – this practice will continue to flourish in New York City and will also continue to steal tax dollars, jobs and profits from those of us who work and live in this great City. And as I said earlier, counterfeiting is not a victimless crime.**

Thank you for your consideration.

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**Prepared Testimony of Joseph C. Gioconda, Esq. to  
New York City Council Committee on Public Safety**

Thursday, June 13, 2013

I would first like to thank Chairman Vallone, the New York City Council Committee on Public Safety and particularly Councilwoman Margaret Chin and her cosponsors, for the opportunity to testify here today before the City Council on Proposed Amendment to the Administrative Code of the City of New York.

I am the founder and managing attorney of Gioconda Law Group PLLC, a litigation and investigation law firm here in New York City. My law firm has represented numerous well-known clients in the fashion and luxury goods industries. At the outset, I must stress that I expressly disclaim testifying here today on behalf of any of my law firm's clients, who may or may not agree with my personal position in this matter.

Draconian though the proposed amendment may seem to the uninformed, I personally believe that the proposed amendment is both warranted and necessary. The commercial sale and distribution of counterfeit goods in New York City is more than a mere public nuisance, although it is that as well.

In my nearly twenty years of experience working as an attorney and expert in various anti-counterfeiting cases, I can say with certainty that counterfeit products pose a real and meaningful threat to consumers and legitimate commerce in several ways.

First, counterfeiters typically obey no laws. Therefore, their goods do not comply with health, safety or labelling regulations. For example, a fake pair of sunglasses can cause injury if they shatter or are not UV coated so as to protect retinas from scarring. Indeed, on many occasions when handling counterfeit merchandise that I or my investigators have purchased as evidence in a court case, we have had to wear rubber hospital gloves to avoid skin exposure and contamination from residues such as lead paint and cheap dye that are frequently used on these substandard products.

Further, product counterfeiting directly funds an underground economy that exploits workers, evades federal, state and municipal taxes, and flouts regulatory health and safety requirements.

According to the U.S. Chamber of Commerce and many others who have studied the growing phenomenon, counterfeit goods threaten more than 19 million American jobs, damaging long-term economic growth and prosperity.

Further, I have personally seen how counterfeit products harm brand owners both directly and indirectly. When trademarks are used on products that do not originate from a brand owner and are therefore not authorized by it, that company is irreparably damaged.

When individuals or companies use trademarks on goods without authorization, they are taking an unauthorized license of those trademarks, without paying any royalties to the brand owner. This is the first form of lost revenue.

Further, there is widespread damage to the brand owner's reputation and a likely loss of future sales from unlicensed products. Brand owners typically set quality standards and specifications for the manufacture of their goods. This is done to assure prospective customers that the brand owner has taken care to provide quality merchandise. When individuals or companies affix trademarks to counterfeits, consumers are provided with goods that bear the marks, but have not been manufactured to any standard of quality control or innovation in style. Therefore, these brands become diluted and commonly associated with lower-quality, cheap knockoffs.

In addition, if those goods should fail prematurely (as many counterfeit goods do) and not hold up to aesthetic standards, the consumer – if still under the misguided belief that the purchased goods originated from or were authorized by the brand owner – will also come to believe that the brand owner does not offer quality and style. This can not only damage the brand owner's reputation, but also lead to the direct loss of future sales.

Where a consumer is fully informed that he or she is purchasing counterfeit goods (i.e., goods that have not been authorized by the brand owner, yet carry one or more of its registered trademarks), that sale will still damage the brand owner and the public at large.

For example, if the fake product purchased by the consumer is seen by other prospective consumers, they may come to believe that the brand owner does not offer quality merchandise. This also results in damage to the designer's reputation and loss of future sales.

Further, as many prominent federal appeals courts have noted, there is absolutely no bar to confusion occurring after the point of sale, once goods enter the stream of commerce, such as on eBay. Harm to consumers occurs both before, at and after the point of sale (e.g., *Hermès Int'l et al v Lederer de Paris Fifth Avenue, Inc.*, 219 F 3d 104, 109 (2d Cir 2000) “[A] loss occurs when a sophisticated buyer purchases a knockoff and passes it off to the public as the genuine article, thereby confusing the viewing public and achieving the status of owning the genuine article at a knockoff price”).

Further, designer merchandise in particular is meant to be exclusive. This exclusivity is controlled by deliberate decisions on several key factors, including:

- the quality of the merchandise;
- price points; and
- distribution channels.

Exclusivity is a marketing decision aimed at driving and maintaining sales. When individuals or companies use trademarks on goods without authorization, it damages this



exclusivity, which not only harms the designer's reputation, but also causes losses of future sales.

Additionally, counterfeiting results in significant added enforcement costs for the brand owners, which are passed on to the consumer.

In order to enforce trademark rights, designers must hire in-house counsel, external counsel, private investigators and support staff, at considerable expense. Designers often have no choice but to invest substantial resources in pursuing counterfeiters, because their trademarks are their most valuable assets and must be protected.

Numerous lawsuits against counterfeiters have been filed by rights holders in recent years to attempt to address this intensifying threat. The US Department of Justice, the US Department of Immigration and Customs Enforcement and the New York City Police Department have each used existing laws to seize millions of dollars in assets, as well as close down many stores and websites.

While there has been some success in combating this scourge, it still continues to pose significant threats to legitimate commerce.

The reason that counterfeiting persists is simple: counterfeiters can generate significant profits by nearly doubling their initial investment with the sale of each counterfeit item. Because of this extraordinary return on investment (ROI), we have found that online counterfeiting can spread exponentially like an infection. The ROI from a single successful sale of a counterfeit handbag, for example, can encourage investment in even more counterfeit merchandise.

I wish to note that it is already illegal under federal statute when stolen or counterfeit property is used in interstate commerce (*e.g.*, 18 U.S.C. § 2314). It is also illegal under New York State law to "knowingly possess stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof" (NYS Penal Law, Sections 165.40, *et seq.*).

In cases where the defendant asserts that it did not possess property that it knew was stolen, the law has developed a substantial body of precedent to work through the various evidentiary issues. For example, there is a statutory (but rebuttable) presumption when a person buys an item without inquiring as to the legal right of the person from whom he or she acquired it (*e.g.*, *People v Grossfield*, 216 AD 2d 319, 320 (1995); see also *People v Agnello*, 178 AD 2d 414, 415-16 (1991))(buyer has constructive knowledge that the goods were obtained illegally).

The innocent purchaser who pays full (or nearly full) price for a wristwatch from someone on the street would thus be able to raise sufficient doubt as to the necessary knowledge of wrongdoing with the police, the district attorney and the jury.

Therefore, to those who express grave concerns that the law will be unable to handle marginal cases where an innocent purchaser stumbles onto a 'great deal' only to be arrested or fined, I would remind them that if that product turns out to be counterfeit, the purchaser will be in the same exact legal position as if it turned out to be stolen. Councilwoman Chin's proposed law would achieve parity in this regard.

It is also worth noting that outside the United States, several other nations have enacted strict laws that are even more stringent than Councilwoman Chin's proposed amendment, and have suffered no adverse consequences.

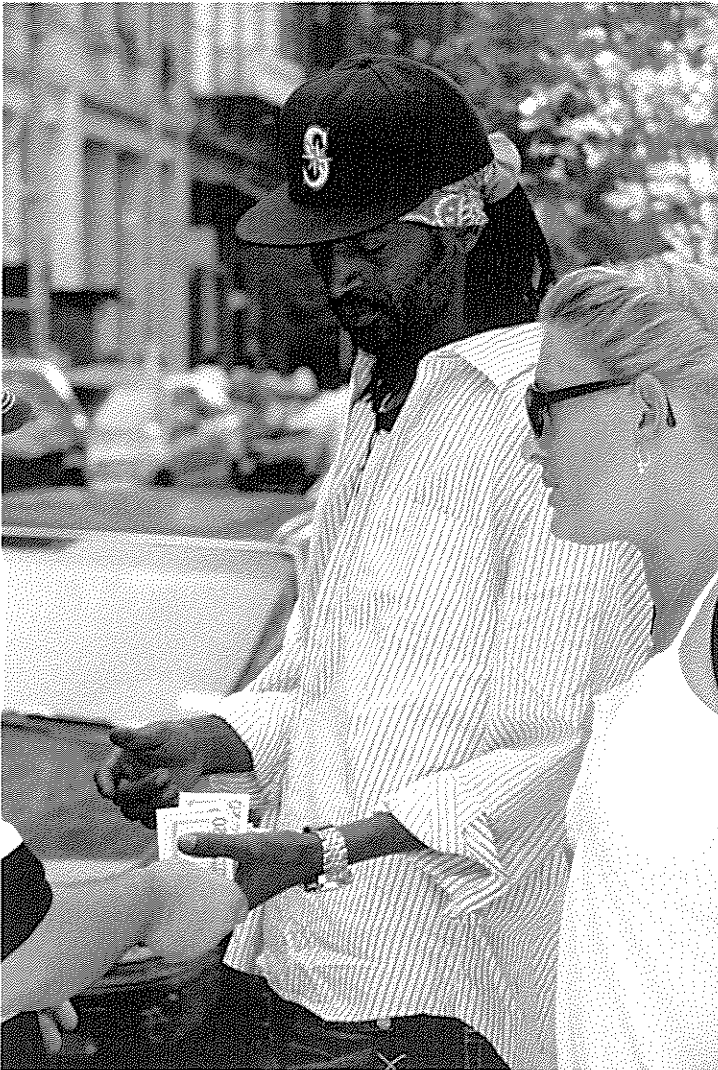
For example, in Italy, the law makes buyers of counterfeit goods liable for fines of between €3,333 and €10,000 (Decree-Law 80/50 of May 14 2005; see also Lisa Lynne Cunningham, *Trademark Counterfeiting and Individual Purchaser Liability*, *National Law Review*, 2011). In France, the maximum fine is €300,000 or three years' imprisonment (the IP Regulation is codified within the French IP Code, which was amended by the Law Against Infringement of October 29 2007 (1544/2007), which implemented the EU IP Rights Enforcement Directive (2004/48/EC). The amendment was followed by the application of Decrees 2008-624 and 2008-625 of June 27 2008. Articles 38, 215, 215 *bis*, 323, 414, 426, 428 and 437 of the Customs Code also apply). For this reason, tourists visiting these destinations are often warned by travel guides to avoid open-air markets touting designer goods for impossible-to-believe prices.

Covering a recent news story about the amendment, a reporter asked one anonymous tourist strolling the streets of downtown Manhattan, "If buying a fake purse here was a crime, would you still do it?" Her answer was an emphatic, "No, it wouldn't be worth it, then." That is exactly why I personally support New York City Councilwoman Chin's amendment.

Thank you, and I am available to answer any questions that the Committee may have.

TESTIMONY OF BROOKE LARSEN  
Designated Representative of the  
First Precinct Community Council  
[www.1stprecinctcc.org](http://www.1stprecinctcc.org)

1. This is a crime and should be treated as one. Counterfeiting money is a crime and I can see no difference here! Let's show everyone that we still stand up for what is right!



2. This is not just a bag or watch or whatever (to quote the younger generation who are being taught that this is not really important) it is just one of the ways business is done today. Well.....I think it is criminal and just plain.... UN-AMERICAN!

3. Families who participate in crime together stay together, yes I see entire families (parents, children, boyfriends and girlfriends) shopping for counterfeit goods, in training from one generation to the next. Very dangerous set of ethics and morals to teach our future leaders, considering the problems already facing our current officials! People learn to get away with small crimes first and then move on.

4. \$\$\$\$\$\$...No Sales Tax is every paid to the state and yet we continue to complain about the deficit. No Rent is being paid and yet we want legitimate businesses to pay theirs! No Income Tax is collected (all cash business) and yet many of those same people who are supporting this illegal trade will be asking for benefits resulting from taxation. The Sheraton Tribeca New York Hotel on its web site advertises "Discover the Tribeca Neighborhood – Barter with local vendors on Canal Street". Gee, I wonder what that means? I personally pay property tax, federal, state, and city income tax and sales tax and you want me to teach your children (maybe there will not be any creative jobs that aren't knockoffs) that plagiarism is wrong. By the way in college we expel students for this offense. Is this only a theoretical crime?

I think not. It is important to Practice what we teach..... it may be that simple!

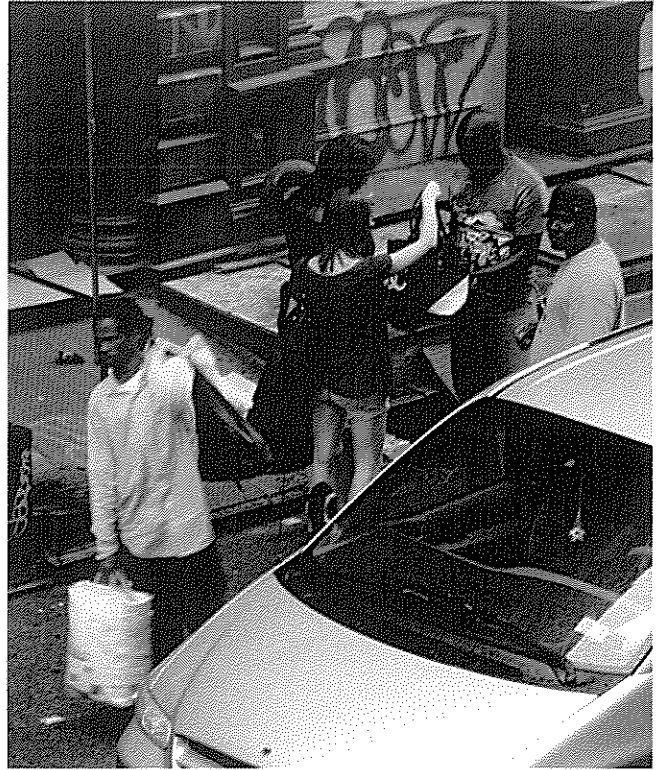
5. This undermines the authority of the police by diminishing belief in the value of the law. I remember when arresting turnstile jumpers was championed because it also resulted in the apprehension of other more serious criminals. We ended the fireworks problem on canal and Broadway by going after the buyers of the illegal goods and it worked. This crime fits in with both of these examples.

6. For those of you who value the notion of a tourist attraction, it is quite the opposite, tourists are tired of being confronted by counterfeit dealers at every tourist attraction. Maybe not all, but enough and do we really want to be the destination of THE CRIMINAL EXPERIENCE? Has New York City come to this? I would rather cater to the tourists who want to see the greatest city in the world with all its museums, shops (real ones of course), theatres, parks, waterways, and all the sites that make New York wonderful.

Will there come a time when one of those big black plastic bags or oversized suitcases everyone (knows) or thinks has counterfeit bags In them, turn out to have a bomb in it, but then that will be too late!  
Just a thought?







**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 204 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/13/13

(PLEASE PRINT)

Name: KATHLEEN MURPHY

Address: \_\_\_\_\_

I represent: ADVISORS OFFICIAL

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

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Name: KAREN TURNER

Address: 350 JAY ST.

I represent: KCDA Charles Hynes

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

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in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Kathleen McBree

Address: \_\_\_\_\_

I represent: Mayor's office of special enforcement

Address: City Hall

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

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in favor  in opposition

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(PLEASE PRINT)

Name: Valerie SALEMBIER

Address: 860 UN Plaza

I represent: The Authentico Foundation

Address: 575 Madison

**THE COUNCIL  
THE CITY OF NEW YORK**

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Name: DEN THOMAS

Address: 45 LISPENARD ST

I represent: SELF

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. 544 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: WELLINGTON CHEN

Address: ~~40-24~~ 60 ST. JAMES PLACE

I represent: MYSELF

Address: \_\_\_\_\_

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**THE COUNCIL  
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in favor     in opposition

Date: 6/13/13

(PLEASE PRINT)

Name: Joseph C. Gioconda, Esq.

Address: 1 Penn Plaza, 36<sup>th</sup> Fl.

I represent: Brand Owners Generally

Address: N/A

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**THE COUNCIL  
THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. 544 Res. No. \_\_\_\_\_

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Date: \_\_\_\_\_

(PLEASE PRINT)

Name: BROOKE LARSEN

Address: 45 LISPENARD ST 2E

I represent: FIRST Precinct Community Council

Address: \_\_\_\_\_

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**THE COUNCIL  
THE CITY OF NEW YORK**

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 in favor  in opposition

Date: 6/13/13

(PLEASE PRINT)

Name: John Hagen

Address: 45 Lispenard St. NY, NY 10013

I represent: 45 Lispenard St. NY, NY 10013

Address: \_\_\_\_\_

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**THE COUNCIL  
THE CITY OF NEW YORK**

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 in favor  in opposition

Date: 6/13/13

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Name: Cathy Haff

Address: 395 Broadway 4D

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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