§ S. 2679

PROCEEDINGS TO OBTAIN REGISTRATION.

SECTION 1. That the owner of a trade--mark in use in commerce within the control of Congress may register such trade--mark--
A. By filing in the Patent Office--
(a) A written application addressed to the commissioner, signed and verified by the applicant, before any officer mentioned in section 15(b), stating the applicant's

[2]
name, citizenship, domicile, residence, and business address, upon what goods the trade--mark is used, the duration of such use, how the right was acquired and, if by succession or assignment, the chain of title, and upon information and belief that the applicant is entitled to the exclusive use of the trade--mark in the United States. A description of the trade--mark may be included if desired by the applicant or required by the commissioner.
(b) A drawing of the trade--mark.
(c) Such number of specimens or facsimiles of the trade--mark as actually used as may be required by the commissioner.
B. By paying into the Patent Office the sum of $10; and
C. By complying with such rules or regulations not inconsistent with law as may be prescribed by the commissioner.

WHAT MAY BE REGISTERED AND EFFECT OF REGISTRATION.

SEC. 2. No mark by which the goods to which it is applied by the applicant may be distinguished as to source or origin from like or analogous or associated goods of others, shall be refused registration as a trade--mark on account of its nature unless it--
(a) Consists of or comprises immoral or scandalous matter.

[3]
(b) Consists of or comprises the flag or coat--of--arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.
(c) Consists of or comprises the portrait or signature of a living individual unless by his written consent.
(d) Consists of or comprises a mark which is identical with or so similar to a prior trade--mark applied to like or to analogous or associated goods as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive purchasers as to their source or origin.
(e) If the mark, when applied to the goods of the applicant has merely a descriptive or geographical meaning or is merely a surname, it shall not be registered under this section unless under the provisions of paragraph (f) following.
(f) Except as expressly excluded in paragraphs (a), (b), (c), and (d) of this section, nothing herein shall prevent the registration of any mark used as a trade--mark by the applicant, in commerce, which has acquired a secondary meaning distinguishing the applicant's goods. Substantially exclusive use as a trade--mark for five years preceding application shall be prima facie evidence of secondary meaning.
(g) Registration of a trade--mark under the provisions of section I shall be prima facie evidence of ownership.

[4]

BUENOS AIRES CONVENTION MARKS.

SEC. 3. In addition to the registration provided in sections 1 and 2 of this Act, the commissioner shall keep a register of--
(a) All marks communicated to him by the international bureaus provided for by the convention for the protection of trade--marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, in connection with which the fee of $50 gold for the international registration established by article 2 of that convention has been paid, which register shall show a facsimile of the mark; the name and residence of the registrant; the number, date, and place of the first registration of the mark in the country in which the owner has his main place of business or where he manufactures the product on which the mark is used, including the date on which application for such registration was filed and the term of such registration; a list of goods to which the mark is applied as shown by such registration, and such other data as may be useful concerning the mark.
Owners of marks so registered, being domiciled in any country which is a party to said convention, shall enjoy, while the registration remains in force, all the rights and benefits conferred by articles 2 to 10, inclusive, of said

[5]
convention, in so far as the same are not contrary to the provisions of this Act.

EXPORT MARKS.
(b) In addition to the registrations herein before provided for, the commissioner shall keep a register of marks as a continuation of the register of marks heretofore registered under paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trade--marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes." Whenever any person actually engaged in manufacturing in, or exporting from, the United States shall apply for registration of any mark, other than those expressly excluded by paragraphs (a), (b), (c), and (d) of section 2, used upon goods manufactured by or for such applicant and exported, or about to be exported, to any foreign country, accompanied by a verified showing that no other person has any superior right to the use of such mark for like goods in commerce with foreign nations, and shall pay into the Patent Office the sum of $10, the commissioner shall forthwith register said mark in said register and issue a certificate of registration for such mark. All registrations under this section, including marks heretofore registered under paragraph (b) of section 1 of said Act

[6]
of March 19, 1920, shall give the registrants the same rights and remedies in commerce concerning said marks which the common law as to trade--marks or unfair competition affords. Applications under this
section shall not be published for opposition as provided in section 7, and shall not be subject to opposition or interference as provided in section 13, but the registrations shall be subject to cancellation under section 13, paragraph (b), or section 14, paragraph(g). The certificates of registration shall be evidence of the date of filing of the applications therefor. Such registrations shall not be used to stop importations under section 29.

NOTICE AND MARKING.

SEC. 4. Registration, under the provisions of this or prior Acts, shall, from the date when this Act takes effect, be constructive notice to all persons. It shall be the duty of the registrant to accompany a registered trade--mark with the words "Registered in U.S. Patent Office" or "Reg. U.S. Pat. Off.," or by the letter "R" in a circle, thus: (R); and in any suit for infringement under this Act by a registrant failing so to mark, no profits and no damages shall be recovered except on proof that the defendant had actual notice or knowledge of the trade--mark and continued to infringe the same after such notice or knowledge.

DEPOSIT IN PATENT OFFICE OF MARKS IN USE.

SEC. 5. Any mark or device used in commerce for the purpose of identifying any merchandise or business may be

[7]
deposited in the Patent Office by the user, by filing one or more copies, as the commissioner may direct, on a form to be furnished by the commissioner, and by paying into the Patent Office a fee of $2. Unless and until such deposit is made or the mark has been registered, or an application for registration has been filed, no action, suit, or proceeding shall be maintained for any alleged infringement of such mark in commerce. Any person using, in commerce, any such mark or device, which shall not have been registered, and for which no application for registration is pending, who shall fail so to deposit it within one year of the first use thereof or within one year after this Act takes effect shall, on applying to register, in any form, under this Act, pay, as a fee for such registration, in lieu of any other fees prescribed in this Act, the sum of $30.
The commissioner shall cause to be assembled for search purposes, in such form as the commissioner may determine, all marks--
(a) Now registered and which may hereafter be registered;
(b) For which applications for registration are pending;
(c) Which may be deposited under this section; and
(d) Any other marks in actual use which the commissioner may direct.

[8]
Such collection of marks shall be open to public inspection at such times as the commissioner may prescribe.

APPLICATION BY FOREIGNERS.

SEC. 6.(a) An application for registration of a trade--mark, filed in this country by any person who has previously regularly filed an application for registration of the same trade--mark in a foreign country wherein he is domiciled, and which is his first application in any country, if such country, by treaty, convention, or law, affords similar privileges to citizens of the United States, shall be accorded the same force and effect as would be accorded to the same application if filed in this country on the date on which the application was first filed in such foreign country, if such application is filed in this country within four months from the date on which the application was first filed in such foreign country. Applications under this section shall conform as nearly as practicable to the requirements of section 1.

PARIS CONVENTION.

(b) Every owner of a trade--mark, being domiciled in any country which is a party to the International Convention entered into at Paris March 20, 1883, revised at Brussels December 14, 1900, and at Washington June 2, 1911, shall enjoy with respect to the registration of said trade--mark and while such registration remains in force all the rights and benefits concerning trade--marks and unfair competition con-

[9]
ferred by said convention, in so far as the same are not contrary to the provisions of this Act. (c) Foreign or alien owners of trade--marks used in this country shall otherwise enjoy the same right to such trade--marks at common law, and the same right to register or enforce such trade--marks under the other sections of this Act, as in the case of citizens or residents of the United States, and their rights of priority shall be determined by their actual use of such trade--marks within the United States.

PUBLICATION IN OFFICIAL GAZETTE.

SEC. 7. Upon the filing of an application for registration of a trade--mark which complies with the requirements of this Act, and payment of the fees herein provided for, the commissioner shall cause an examination thereof to be made, and if, on such examination, it shall appear that the applicant is entitled to have the trade--mark registered under the provisions of this Act, the commissioner shall cause the mark to be published at least once in the Official Gazette of the Patent Office. If no notice of opposition, as hereinafter provided, is filed within the period specified in section 13, paragraph (a), the commissioner shall issue a certificate of registration therefor. If on examination an application is refused, the commissioner shall notify the applicant, giving his reasons therefor. Applications under section 3

[10]
shall not be published for opposition and this section shall not apply to marks deposited under section 5.

DESIGNATION OF REPRESENTATIVE.

SEC. 8. Every applicant for registration of a trade--mark, or for renewal of registration of a trade--mark, who is not resident within the United States, shall, before the issuance of the certificate of registration, as hereinafter provided for, designate, by a notice in writing, filed in the Patent Office, some person residing within the United States on whom process or notice of proceedings affecting the trade--mark of which such applicant may claim to be the owner, brought under the provisions of this Act or under other laws of the United States, may be served, with the same force and effect as if served upon the applicant or registrant in person. Any nonresident registrant may in like manner designate such a representative; and after this Act takes effect no suit or action shall be brought under any registration owned by such nonresident registrant, and no profits or damages for infringement thereof shall accrue, until such notice of designation has been filed. Such service may be made by leaving a copy of the process or notice at the last address of which the commissioner has been notified or by mailing it to such address.

[11]

APPEAL IN EX PARTE CASES.

SEC. 9. (a) In an ex parte case, appeal may be taken to the commissioner in person from the decision of the examiner in charge of trade--marks, and from the decision of the commissioner to the Court of Appeals of the District of Columbia, whose decision shall be final, except as it may be reviewed by the Supreme Court on certiorari, as provided by section 251 of the Judicial Code.
(b) Any applicant, if he so elect, in lieu of appealing to the Court of Appeals of the District of Columbia, may, within one year after the decision of the commissioner, transfer the case to a court of original jurisdiction, named in section 22, in the district of his residence, and the commissioner, at the expense of the applicant, shall certify and file with the clerk of such court a copy of the application and all proceedings therein, and the commissioner may, at his election, enter his appearance as party defendant; otherwise the case shall proceed ex parte. The powers and duties of the court under this section shall be those prescribed in section 14 in so
far as they may be applicable, but all expenses of the proceeding shall be paid by the applicant whether the final decision is in his favor or not.

[12]

CERTIFICATE OF REGISTRATION.

SEC. 10.(a) All certificates of registration of trade--marks shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall either be signed by the commissioner, or have his name printed thereon and attested by an assistant commissioner or by one of the law examiners duly designated by the commissioner, and shall be recorded, together with printed copies of the drawing and application, in the Patent Office in books to be kept for that purpose. The certificate shall state the date on which the application for registration was received in the Patent Office. Certificates of registration of trade--marks may be issued to the assignee of the applicant, where the assignment has been recorded in the Patent Office.
(b) The commissioner, upon application of the registrant, may permit any registration under this or any previous Act to be canceled, and for good cause, to be amended or disclaimed in whole or in part, at any time, provided when so amended it shall still contain registrable matter, and shall make appropriate entry upon the records of the Patent Office and upon the certificate of registration or a certified copy thereof which shall be tendered for this purpose.
(c) Written or printed copies of any records, books, papers, or drawings relating to trade--marks belonging to the Patent Office, and of certificates of registration, certified and

[13]
authenticated as provided in paragraph (a) of this section shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the fee required by law shall have such copies.

RENEWALS.

SEC. 11. Each certificate of registration shall remain in force for twenty years, and all except those under section 12 shall be effective throughout the United States. Certificates of registration may be renewed for like periods from the end of the expiring period on payment of the renewal fees required by this Act, upon request by the registrant, his legal representatives, or transferees of record in the Patent Office, and such request may be made at

any time within six months prior to the expiration of the period for which the certificates of registration were issued or renewed. Certificates of registration in force at the date at which this Act takes effect shall remain in force for the period for which they were issued and shall have the same force and effect as certificates issued under this Act and shall be renewable under its provisions.

PLURAL REGISTRATION.

SEC. 12. When an applicant for registration under this Act claims the ownership of a trade--mark for only a limited portion of the territory of the United States, the commissioner may register the mark for such limited territory. When, in case of opposition or otherwise, two or more claimants of

[14]
the same trade--mark shall by a written agreement or stipulation filed or recorded in the Patent Office, specify the territory within which each has used such mark, the commissioner may register the same mark to each such claimant for such limited territory, respectively. Each certificate of registration under this section shall be in terms restricted to the limited territory to which the registrant is entitled.

CONTESTED PATENT OFFICE PROCEEDINGS.

SEC. 13. The following shall be the contested proceedings in the Patent Office:
(a) Opposition. Any person who believes he would be damaged by the registration of a mark may oppose the same by filing notice of opposition, duly verified, stating the grounds therefor, in the Patent Office within thirty days after the publication in the Official Gazette of the mark sought to be registered. A notice of opposition may be filed by a duly authorized attorney, but shall be void unless verified by the opposer within a reasonable time after such filing. For good cause shown the time for filing notice of opposition may be extended by the commissioner not more than thirty days and for good cause shown the commissioner may receive a notice of opposition filed within sixty days from the date of publication.
(b) Cancellation. Any person who believes he is damaged by the registration of a trade--mark may at any

[15]
time apply to the commissioner to cancel the registration thereof by filing a petition, duly verified, stating the grounds therefor. Abandonment, or absence of right to use shall be grounds for cancellation. Nonuse for more than two years shall be prima facie evidence of abandonment.
(c) Interference. Whenever application is made for the registration of a trade--mark which is identical with or so similar to a trade--mark previously registered or applied for by another and applied to like or to analogous or associated goods as to be likely, in the opinion of the commissioner, when applied to the goods of the applicant, to cause confusion or mistake or to deceive purchasers as to their source or origin he may declare that an interference exists.
(d) In every case of opposition to registration, petition for the cancellation of a registered trade--mark, or interference, the commissioner shall direct the examiner in charge of interferences to determine the right of registration, the sufficiency of objections to registration, and of the grounds for cancellation, in such manner and upon such notice to those interested as the commissioner may be rules prescribe.

(e) Appeal may be taken to the commissioner in person from the decision of the examiner of interferences.
(f) The commissioner may refuse to register the mark against the registration of which opposition is filed, may cancel the registration of a registered trade--mark, or may

[16]
refuse to register both of two interfering marks, or may register the trade--mark for the person entitled thereto. Action shall be stayed for sixty days after final decision by the commissioner to give time for transferring the proceeding as provided in section 14.
(g) Whenever there shall be pending in the Patent Office an interference and an opposition or cancellation concerning the same trade--mark and involving the same or like issues, so that the proceedings may conveniently be determined upon the same evidence, such proceedings may be consolidated upon motion of any party thereto or by direction of the commissioner.

TRANSFER OF CONTESTED PROCEEDINGS TO COURT.

SEC. 14.(a) Upon the decision of the commissioner, any party to any of the proceedings mentioned in section 13 hereof may, within sixty days after the decision of the commissioner, transfer the cause to any court of original jurisdiction named in section 22 hereof in the district of the residence of the party against whom relief is sought, or if there are two or more such parties, then in the district of the residence of any of them, or if such party is not domiciled in the United States, then to the court of the district of the residence of the representative designated in section 8 hereof, or if no representative is so designated then in the District of Columbia.

[17]
(b) The commissioner, at the expense, in the first instance, of the party so transferring the cause, shall certify and file with the clerk of such court a transcript of the record in the proceeding, including the testimony and exhibits or such portions thereof as the parties may stipulate. The court shall then issue its process (which may be served anywhere in the United States) to all parties to such proceeding and shall thereupon have jurisdiction thereof and of the parties.
(c) The court may direct the issues to be formulated by appropriate pleadings and shall consider the transcript of record, testimony, and exhibits so certified and filed by the commissioner, evidence in the cause, but may, in its discretion, take or hear additional evidence.
(d) The court may determine the right to registration, order the cancellation of registrations, restore canceled registrations, and otherwise rectify the register, and shall make and enter such orders and decrees as the case may require, including relief by way of injunction, damages, profits, costs, and otherwise, as provided in section 18, and such judgment or decree may be enforced as provided in section 23 hereof.
(e) The provisions of section 4915 of the Revised Statutes shall not apply in trade--mark cases.
(f) Any order of the court with respect to the right of registration, the cancellation of registrations, the restoration

[18]
of canceled registrations, or otherwise rectifying the register shall be served upon the commissioner, who shall make appropriate entry upon the records of the Patent Office.

(g) In lieu of the method provided in paragraph (b) of section 13 any person damaged by any registration of a trade--mark may have relief by suit in equity against the registrant for cancellation of such registration, and the court on due proceedings had may, according to the circumstances of the case, cancel such registration in whole or in part; and such decree shall be served upon the commissioner, who shall make appropriate entry upon the records of the Patent Office.

ASSIGNMENT.

SEC. 15.(a) Every registered trade--mark and every mark for the registration of which application has been made, together with the application for registration of the same, shall be assignable in connection with the good will of the business in which the mark is used, by an instrument in writing, duly acknowledged or otherwise proved, according to the laws of the country or State in which it is executed or made; any such assignment shall be void as against any subsequent purchaser for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from the date thereof or prior to such subsequent purchase. The commissioner shall keep a record of such assignments.

[19]
(b) If any such assignment be acknowledged before any notary public of the several States or Territories or the District of Columbia, or any clerk or commissioner of any United States district court, or before any secretary of legation or consular officer authorized by the laws of the United States to administer oaths or perform notarial acts, or before any notary public, judge, or magistrate of any foreign country authorized to administer oaths or perform notarial acts in such country whose authority shall be proved by certificate of a diplomatic or consular officer of the United States, the certificate of such acknowledgment shall be prima facie evidence of the execution of such assignment.

FEES.

SEC. 16. Trade--mark fees, payable to the Patent Office shall be as follows: On filing each original application for registration of a trade--mark (applications may be transferred from one class to another without additional fee), $10. On filing each such application after one year, as provided in section 5, additional, $20. On filing each application for renewal of the registration of a trade--mark, $10. On each deposit under section 5, $2. On each filing notice of opposition to the registration of a trade--mark or a petition for cancellation, $10.

[20]
On filing a disclaimer or an amendment to a registration, $5. On appeal from the examiner in charge of trade--marks to the commissioner, $15. On appeal from the decision of the examiner in charge of interferences to the commissioner, $15. For manuscript copies, for every 100 words or fraction thereof, 10 cents. For a single printed copy of statement, declaration, and drawing, 10 cents. For certifying in any case, additional, 75 cents. For comparing other copies, 5 cents for every hundred words or fraction thereof. For each additional trade--mark or application, which may be included under a single certificate, 25 cents additional. For recording every assignment, power of attorney, or other paper of three hundred words or under, $1; of over three hundred and under one thousand words, $2; and for each additional one thousand words or fraction thereof, $1. SEC. 17. Trade--mark fees paid by mistake shall be refunded.

REMEDIES FOR INFRINGEMENT.

SEC. 18. Any person who shall, in commerce, infringe any registered trade--mark, shall be liable--

[21]
(a) To an injunction restraining infringement of such registered trade--mark.
(b) To pay to the owner all profits which the infringer suffered from the infringement.
(c) To pay to the owner all profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only, and the defendant shall be required to prove every element of cost or deduction claimed; but there shall be no recovery of profits from any defendant whose adoption and use of an infringing trade--mark was in good faith and without knowledge of the plaintiff's right thereto, except such profits as accrued therefrom after such defendant had actual notice or knowledge thereof.
(d) If the court shall find that the damages or profits, or both, are either inadequate or excessive, the court may, in its discretion, decree the payment of such sum as the court shall find to be just according to the circumstances of the case, such sum to constitute compensation and not a penalty.
(e) To deliver up, on oath, upon such terms and conditions as the court may prescribe, all copies, counterfeits or colorable imitations of the registered trade--mark, to be impounded during the pendency of the proceeding.

[22]
(f) To deliver up, on oath, for destruction, all copies, counterfeits or colorable imitations of the registered trade--mark, and all plates, molds, matrices, or other means of making the same.
(g) To deliver up, on oath, for destruction, all printed matter containing any copies, counterfeits or colorable imitations of the registered trade--mark, and all plates, molds, matrices or other means of making the same; but when such printed matter is a catalogue, or otherwise consists mainly of noninfringing matter, the objectionable contents thereof may be obliterated or otherwise removed as the court may direct.
(h) Except as provided in section 12, the right of the owner of a registered trade--mark to the remedy of injunction shall extend throughout the United States and shall not be limited to be merely coextensive with the territory within which such owner has used such registered trade--mark; and the court may give the plaintiff the benefit of all other remedies named in this section.
(i) This section shall be applicable only to infringements committed after this Act shall take effect; for infringements previously committed the remedies shall be those provided by the statutes heretofore in force.
(j) This section shall not apply to registrations under paragraph (b) of section 3.

[23]
(k) Rules and regulations for practice and procedure under this section and under sections 9(b), 14 and 29(c) may be prescribed by the Supreme Court of the United States.

PROCEDURE.

SEC. 19. Any court given jurisdiction under this Act may, in any action, suit, or proceeding, under the provisions hereof, enter a judgment or decree enforcing the remedies herein

provided. It shall be the duty of the clerks of said courts upon the filing of any pleading in any action, suit, or proceeding under this Act, to give notice to the commissioner, giving the title of the case and the numbers of the trade--mark registrations on which such pleadings are based, and upon the entry of each judgment or decree to give notice thereof to the commissioner, and for each such notice the clerk shall tax a fee of 50 cents as costs of suit. It shall be the duty of the commissioner, on receipt of each such notice, to indorse the same upon the file wrapper of each trade--mark so named.

SEC. 20. The proceedings for an injunction, damages, and profits, and those for the seizure of infringing trade--marks, plates, molds, matrices, or other means for making such infringing marks may be united in one action.

SEC. 21. In all actions, suits, and proceedings under this Act, in any court, full costs shall be allowed to the pre-

[24]
vailing party and the court may include a reasonable attorney's fee as part of the costs. Such allowance may also include costs and fees incurred in the Patent Office in cases originating there and transferred under section 14. This section shall not apply to appeals in or transfer of ex parte cases under section 9.

JURISDICTION.

SEC. 22. The district and territorial courts of the United States and the Supreme Court of the District of Columbia shall have original jurisdiction, and the Circuit Courts of Appeals of the United States and the Court of Appeals of the District of Columbia shall have appellate jurisdiction of all actions, suits, and proceedings under this Act, without regard to the citizenship of the parties or the amount in controversy, and the judgments of such Appellate Courts shall be final, except as they may be reviewed by the Supreme Court on certiorari as provided by sections 240 and 251, respectively, of the Judicial Code.

SEC. 23. Any injunction which may be granted according to section 18 may be served anywhere in the United States, and shall be operative, and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other Federal court having jurisdiction of the party enjoined. The clerk of the court or judge granting the injunction shall,

[25]
when requested to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of any necessary papers on which the said injunction was granted that are on file in his office.

TRADE NAMES AND DEVICES REGISTERABLE.

SEC. 24. Subject to the provisions of section 2 hereof, any person, firm, corporation, union, agricultural or other association, club, fraternal society, institution, or organization may register any trade name or device used in commerce, in the same manner and with the same effect, and when registered said trade name or device shall be entitled to the same protection against infringment, as provided herein in the case of trade--marks used upon goods.

MISCELLANEOUS PROVISIONS.

SEC. 25. Except as provided in section 5 hereof, nothing in this Act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade--mark might have had at common law; nor shall anything in this Act deprive a defendant in a suit upon any registered trade--mark or in any proceeding under this Act, of any defenses against the validity of the trade--mark which he would have had if the trade--mark had not been registered.

[26]

SEC. 26. All applications for registration and all contested proceedings pending in the Patent Office at the time of the passage of this Act shall be proceeded with under the provisions of this Act.

SEC. 27. Any person who shall procure registration or deposit of a trade--mark in the Patent Office by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable to pay any damages sustained in consequence thereof to the injured party.

RULES AND REGULATIONS.

SEC. 28. The commissioner may make rules and regulations, not inconsistent with law, concerning the registration of trade--marks. He may require nonregisterable matter to be disclaimed. He may establish a classification of merchandise, for convenience of Patent Office administration, but not to limit or extend the applicant's rights. The applicant may register his trade--mark in one application for any or all goods included in one class upon which the mark has actually been used. The commissioner may establish a classification under section 24 thereof.

IMPORTATION OF GOODS BEARING INFRINGING MARKS FORBIDDEN.

SEC. 29.(a) Any merchandise, whatever may be its source or origin, which shall bear any registered trade--mark or any infringement thereof, shall not be imported into the

[27]
United States or admitted to entry at any custom house of the United States, unless the written consent of the registrant to such importation or entry be first had and obtained, or unless such offending mark be removed or obliterated, and if brought into the United States in violation of the provisions of this section, any person selling, offering for sale or dealing in such merchandise shall be amenable, at the suit of the registrant, to the liabilities prescribed in section 18 hereof, and in addition be required to reexport or destroy such merchandise or to remove or obliterate such infringing trade--mark therefrom and such merchandise shall be subject to seizure and forfeiture for violation of the customs laws. In order to aid the officers of the customs in enforcing this section the registrant may require a copy of the certificate of registration of his trade--mark to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

IMPORTATION OF GOODS BEARING FALSE NAMES FORBIDDEN.
(b) Any merchandise, whatever may be its source or origin, which shall bear the name or a simulation thereof

[28]
of any domestic manufacture, or manufacture or trader, or of any manufacturer or trader located in any foreign country which by treaty, convention, or law affords similar privileges to citizens of the United States, shall not be imported into the United States or admitted to entry at any customhouse of the United States, unless the written consent of such manufacturer or trader to such importation or entry be first had and obtained, or unless such offending name be removed or obliterated, and if brought into the United States in violation of the provisions of this section, any person selling, offering for sale, or dealing in such merchandise may be enjoined from dealing therein, and in addition be required to export or destroy such merchandise or to remove or obliterate such name therefrom, and the merchandise shall be subject to seizure and forfeiture for violation of the customs laws. In order to aid the officers of the customs in enforcing this section, any such domestic or foreign manufacturer or trader may require a statement of his business or commercial name and the locality where his business is located and where his goods are manufactured to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and thereupon the Secretary of the Treasury shall cause one or more copies of such record to be transmitted to each collector or other proper officer of customs.

[29]

SUMMARY PROCEEDINGS BY IMPORTER TO DETERMINE LEGALITY OF SEIZURE.
(c) The owner, importer, or consignee of merchandise refusing entry or seized under paragraphs (a) and (b) of this section may have relief against the registrant, manufacturer, or trader by a bill in equity or by a summary proceeding on petition in any court of original jurisdiction named in section 22, in the district where such merchandise is held, or where such registrant, manufacturer, or trader or a designated representative under section 8 is an inhabitant or may be found, and after such notice and upon such proceedings as the court may direct, the court may determine whether the plaintiff or petitioner for any reason has the right to import such merchandise under the names or marks which it bears.
(d) A decree or order of such court for the plaintiff or petitioner, upon being certified to the collector of the port where the merchandise is held, shall be warrant to such collector to release the merchandise from arrest or seizure or forfeiture under this section.
(e) Such order or decree, whether interlocutory or final, shall be appealable, and the court making such order or decree may, in its discretion, suspend the operation thereof pending appeal.

[30]

FALSE MARKINGS FORBIDDEN, AND REMEDIES THEREFOR.

SEC. 30. Any person who shall affix, apply, or annex, or use in connection with any article or articles of merchandise, or any container or containers of the same, a false designation of origin, or any false description or representation including words or other symbols, tending falsely to identify the origin of the merchandise, or falsely to describe or represent the same,

and shall cause such merchandise to enter into commerce, and any person who shall knowingly cause or procure the same to be transported in commerce, or shall knowingly deliver the same to any carrier to be so transported, shall be liable to an action at law for damages and to a suit in equity for an injunction, at the suit of any person doing business in the locality falsely indicated as that of origin, or in the region in which said locality is situated, or of any person who is or is likely to be damaged by the use of any false description or representation, or at the suit of any association of such persons, and any article marked or labeled in contravention of the provisions of this section, shall not be imported into the United States, or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of merchandise refused entry in any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws, or may

[31]
have the remedy given by paragraphs (c), (d), and (e) of section 29.CONSTRUCTION OF THIS ACT

SEC. 31. In the construction of this Act, unless otherwise plainly apparent from the context, the United States includes and embraces all territory which is under the jurisdiction and control of the United States. The word "States" includes and embraces the District of Columbia, the Territories of the United States, and such other territory as shall be under the jurisdiction and control of the United--States.The word "commerce" means all commerce within the control of Congress. The terms "person" and "owner," and any other word or term used to designate the applicant or other entitled to a benefit or privilege or rendered liable under the provisions of this Act, include a firm, a corporation or association, or any legal representative or entity capable of possessing and transferring title, as well as a natural person. The terms "applicant" and "registrant" embrace the legal representatives, successors, and assigns of such applicant or registrant. The term "commissioner" means the Commissioner of Patents. The term "trade--mark" includes any mark so used as to distinguish the source or origin of the users' goods, and a trade--mark shall be deemed to be applied to an article when it is placed in any manner in or upon either the article itself or the

[32]
receptacle or package or upon the envelope or other thing in, by, or with which the goods are packed or inclosed or otherwise prepared for sale or distribution. The term "registered" means registered under this Act or under any of the prior Acts named in the following section so long as such registration shall remain in force, but has no application to marks deposited under section 5. Words used in the singular include the plural, and vice versa. Except as otherwise expressly provided, this Act is declaratory of the common law as to trade--marks or trade names or devices, and extends such law to commerce within the control of Congress, and in case of doubt its provisions are to be construed accordingly.

ACTS REPEALED.

SEC. 32. This Act shall be in force and take effect_____ All Acts and parts of Acts inconsistent herewith are hereby repealed, including the following, viz: The Act of Congress approved March 3, 1881, entitled "An Act to authorize the registration of trade--marks and protect the same"; the Act approved August 5, 1882, entitled "An Act relating to the registration of trade--marks"; the Act of February 20, 1905, as amended, entitled "An Act

to authorize the registration of trade--marks used in commerce with foreign nations, or among the several States, with Indian tribes, and to protect the same"; the Act of March 19, 1920.

[33]
entitled "An Act to give effect to certain provisions of the convention for the protection of trade--marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes," and section 526 of the "Tariff Act of 1922," except that this repeal shall not affect the validity of registrations under said Acts, respectively, or rights or remedies thereunder for infringements committed before this Act shall take effect. Registrations under the Act of March 19, 1920, shall expire in twenty years from the date of registration, and such registration shall not be used to stop importations under section 29 of this Act. Paragraphs (b) and (c) of section 13 and section 14 of this Act shall apply to registrations under the Act of March 19, 1920.

SEC. 33. Section 4 of the Act of January 5, 1905, as amended, entitled "An Act to incorporate the National Red Cross," is not repealed or affected by this Act.

CITATION.

SEC. 34. This Act may be cited as "The Trade--marks Act, 1924."

Calendar No. 1134

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| 68TH CONGRESS | SENATE | REPORT |
| 2d Session | No. 1067 | |

# TO PROTECT TRADE--MARKS USED IN COMMERCE, AND TO AUTHORIZE THE REGISTRATION OF SUCH TRADE--MARKS

FEBRUARY 3 (calendar day, FEBRUARY 10), 1925.----Ordered to be printed

MR. ERNST, from the Committee on Patents, submitted the following

## REPORT

[To accompany S. 2679]

The Committee on Patents, to whom was referred the bill (S. 2679) to protect trade--marks used in commerce, to authorize the registration of such trade--marks, and for other purposes, having considered the same, report thereon with the recommendation that it do pass as amended.

This bill was considered in public hearings at a joint meeting of the Senate and House Committees on Patents held in room 210, Senate Office Building, Washington, D. C., on January 20 and 21, 1925. H. R. 8637, introduced by Hon. Florian Lampert, chairman of the House committee, the joint committee was advised, was identical with S. 2679.

Every possible consideration was shown those in attendance at the hearings, who indicated an interest in the pending legislation, and all persons present who desired to be heard for the purpose of the record were given opportunities to make statements before adjournment.

Among those addressing the committee were Arthur William Barber of New York City, representing the United States Trade--Mark Association and clients; Otto R. Barnett, of Chicago, attorney at law; William W. Dodge, of Washington, D. C., attorney; Karl Fenning, Assistant Commissioner, United States Patent Office; Arthur C. Fraser, New York City, chairman of the committee on trade--mark legislation, New York Patent Law Association, of New York City; Arthur P. Greeley, Washington

Loan & Trust Co. Building, Washington, D. C.: Bernard A. Kosicki, of Washington, D. C., Bureau of Foreign and Domestic Commerce, Department of Commerce; James T. Newton, Washington, D. C., member of the [2] Washington branch of the American Patent Law Association; A. C. Paul, of Minneapolis, Minn., member of the section of patent, trade--mark, and copyright law of the American Bar Association; E. L. Rice, of Washington, D. C., attorney; Thomas E. Robertson, Washington, D. C., Commissioner United States Patent Office; Edward S. Rogers, Chicago, Ill., chairman of the section of patent, trade--mark, and copyright law of the American Bar Association; Robert Watson. Washington, D. C., attorney at Law; and Robert N. Zacharias, Washington, D. C., attorney at Law.

The chairman began the hearings by reading a short statement setting out the history of S. 2679 and H. R. 8637, and explained that the joint meeting followed a suggestion by representations of the American Bar Association, the New York Patent Law Association, the Chicago Patent Law Association, and others.

The chairman advised the joint committee of the comment favorable to the pending bill and also of certain comment in which suggestions were made in opposition to certain sections of the measure. During discussion of the measure several of those who appeared in opposition to certain features of the bill assured the joint committee that they appreciated the intelligent and painstaking work which had been done by the experts engaged over a period of years in the preparation of the bill and expressed their approval of the same, except as to a few of its provisions.

At the meeting of the Senate committee on February 4, 1925, at 10 A.M. when S. 2679 was considered in executive session, the committee unanimously approved the bill and requested the chairman to report the bill favorably, as amended.

69th Congress, 1st Session

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 21, 1925

Mr. VESTAL introduced the following bill; which was referred to the Committee on Patents and ordered to be printed

A BILL

To protect trade--marks used in commerce, to authorize the registration of such trade--marks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.