§ H.R. 6683

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. 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 name, citizenship, domicile, residence and business address,

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upon what goods the trade--mark is used, the duration of such use, how the right was acquired, and, if by succession or assignment, from whom, and upon information and belief that the applicant is entitled to the exclusive use of the trade--mark in the United States, and that the applicant is using it in commerce. A description of the trade--mark may be included if desired by the applicant or required by the commission:
(b) A drawing of the trade--mark; and
(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.

If the applicant resides or is located in a foreign country, the statement shall set forth that the trade--mark has been registered by the applicant or that an application for the registration thereof has been filed by him in the foreign country in which he resides or is located and shall give the date of such registration or application. In such cases the applicant need not allege use in commerce.

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SEC. 2. No mark by which the goods to which it is applied by the applicant may be distinguished as to source or origin shall be refused registration as a trade--mark on account of its nature unless it--
(a) Consists of or comprises immoral or scandalous matter.
(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, or the name, portrait, or signature of any deceased President of the United States during the life of his widow, if any, unless by her written consent.
(d) Consists of or comprises a mark which so resembles a trade--mark previously used by another 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.
When such previously used trade--mark is applied to merchandise of the same descriptive properties it shall constitute prima facie grounds for refusing registration.
(e) Consists of a mark which when applied to the goods of the applicant has merely a descriptive or geographical meaning or is merely a surname.

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Rejection on any of the foregoing grounds shall be subject to rebuttal by evidence of relevant facts.
(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, in accordance with the principles of common law, 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) Registrations of a mark except under paragraph (f) of this section shall be prima facie evidence of ownership as of the date the application was filed. Registration of a mark by virtue of paragraph (f) shall be prima facie evidence of the right as of the date the application was filed to prevent others from using the mark in a manner likely to cause confusion or mistake or to deceive purchasers as to the source or origin of the goods.

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 an international bureau organized under the provisions of a treaty or convention to which the United States is a party and in connection with which the fee required by such conventions for inter--

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national registration and the fee for registration provided by the laws of the United States have been paid where the mark so communicated is deemed by the Commissioner of Patents to be such that protection can be granted thereto in accordance with existing law. The communication from the international bureau shall show the name and address of the owner of the mark; the date of application for registration in the State of first registration or deposit, which State must be one of the signatory countries; the number of the registration and the date of expiration in the State of first registration or deposit; a facsimile of the mark; a statement of the goods on which the mark is used in the State of first registration or deposit; the date of the application of recognition of the rights claimed under the convention; and such other data as may be useful concerning the mark. If objection is made to the registration of such mark, notice thereof shall be communicated by the Commissioner to the said international bureau.
Registrations effected under the foregoing paragraph shall be subject to renewal and to cancellation in accordance with the provisions of this Act.
When protection is refused to any mark communicated by an international bureau as above specified, by reason of a prior registration or pending application for registration, the proprietor of the mark claiming recognition of rights under the treaty or convention shall have the right to seek

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and obtain the cancellation of the previously registered mark, upon proving, according to the procedure fixed by existing law, such refusal and--
(1) That he had legal protection for his mark in any of the contracting States before the date of use of the mark the registration of which he seeks to cancel; or
(2) That the registrant had no right to the ownership, use, or employment of the registered mark at the date of its deposit; or
(3) That the mark covered by the registration which he seeks to cancel has been abandoned.
That time within which such application for the cancellation of a registration may be made shall be two years from September 30, 1926, if the refusal to register was made prior to that

date, and in all other cases it shall be one year from the date of the receipt by the international bureau of the refusal to register.
The term "legal protection" for the mark as used herein shall be interpreted to include ownership of the mark in the United States acquired by adoption and use and with or without subsequent registration.
The foregoing section shall be construed in accordance with the reservations adopted by the Senate of the United States on February 24, 1925, in ratifying the Convention for the Protection of Commercial, Industrial, and Agricul--

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tural Trade--Marks and Commercial Names, signed at Santiago, Chile, on April 23, 1923, said reservations being as follows:
First. That in section one (1) of Article VIII the words "and to which they give course for the purposes," the equivalents of which appear in the Spanish, Perruguese, and French texts of the convention, shall be inserted in the English text after the word "registration," so that the English text of the section shall read as follows:
Section one (1) To keep a detailed record of the applications for the recognition of marks received through the national offices of registration and to which they give course for the purposes of this convention, as well as of all assignments or transfers thereof and of all notices pertaining thereto.
Second. That in Article II of the appendix, subheading C, line 2, the words "for registration," the equivalents of which appear in the Spanish, Portuguese, and French texts, shall be inserted in the English text after the word "application," so that the English text of the line shall read as follows:
"2. The date of the application for registration in the State of first registration or deposit."
Third. That the expressions in Article I "without prejudice to the rights of third parties" and in Article II

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"in the absence of other proof of ownership of a mark" are, and shall be, interpreted to protect every user of a trade--mark in the United States having ownership thereof by reason of adoption and use, and with or without subsequent registration, from any claim of priority under this convention based upon an application or an entry in a signatory State subsequent to the actual date of such adoption and use in the United States.
Fourth. That the expression "legal protection for his mark" in section 2 (a) of Article V shall be interpreted to include ownership of the mark in the United States acquired by adoption and use and with or without subsequent registration.
Fifth. That nothing contained in this convention shall take away or lessen any trade--mark right or any right to use a trade--mark of any person residing or doing business in the United States heretofore or hereafter lawfully acquired under the common law or by virtue of the statutes of the several States or of the United States.
The commissioner may record transfers or assignments of trade--marks upon regular notification of such transfers or assignments received from the proper international bureau upon the payment of the statutory recording fee.
Owners of marks so registered, being domiciled in any country which is a party to said convention, shall enjoy,

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while the registration remains in force, all the rights and benefits conferred by said convention.

(b) In addition to the registrations hereinbefore provided for, the commissioner shall keep a register of marks as a continuation of the register of marks heretofore registered under paragraph (b) of section1 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 engaged in manufacturing in, or exporting from, the United States shall apply for registration of any mark (including a trade--mark, symbol, label, package, configuration of goods, name, word or phrase) 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 certificate showing that no other person has any superior right to the use of such mark for merchandise of the same descriptive properties, and shall pay into the Patent Office the sum of $10, the commissioner, subject to examination and search to determine whether the mark is excluded by paragraphs (a), (b), (c), and (d), of section 2, shall forthwith register said mark in said

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register and issue a certificate of registration for such mark, which shall be evidence of the date of filing the application therefor, and of the claim of the registrant of right in such mark. Registrations under this section, including marks heretofore registered under paragraph (b) of section 1 of said Act of March 19, 1920, shall give the registrant the same protection in commerce of the marks so registered as the common law affords. Applications under this section shall not be published for opposition, as provided in section 7, and shall not be subject to opposition as provided in section 13, but the registrations shall be subject to cancellation under section 13, paragraph (b), or section 14, paragraph (g). Such registration shall not be used to stop importations under section 29.

SEC. 4. (a) Registration under sections 1 and 2 hereof or under the Act of February 20, 1905, shall, from the date when this Act takes effect, be constructive notice as of the date of registration to all persons of the fact of registration and of the fact that the registrant claims the right to the exclusive use in commerce of the mark so, registered. 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. Fat. 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

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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, and no such profits or damages shall accrue except after such notice or knowledge.
(b) It shall be unlawful for any person to accompany any unregistered trade--mark with the words "Trade--Mark Registered in U. S. Patent Office," or "Trade--Mark Reg. U. S. Pat. Off.," or with the letter "R" in a circle, thus (R)
or with any other letters, words, or abbreviations of like import; or to use in connection with any unregistered mark any such words or abbreviations on any label or in any catalogue, circular, or advertising matter.
(c) It shall be unlawful for any person to accompany any mark, whether entered under section 5 or not, with the words "Deposited in the U.S. Patent Office," or "Entered in the U. S. Patent Office," or "Recorded in the U. S. Patent Office," or with any other letters, words, or

abbreviations of like import, or use any such words or abbreviations on any label, or in any catalogue, circular, or advertisement.
(d) Any person who violates the provisions of section 4(c) of this Act, or who, having merely entered his mark in accordance with the provisions of section 5 of this Act, accompanies that mark with any of the indications mentioned

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in section 4 (b) of this Act, or places any of them on any label or in any catalogue, circular, or advertising matter, shall be guilty of a misdemeanor punishable by a fine of not less than $100 or more than $250.

SEC. 5. In order to have available for search purposes a collection of unregistered marks, the commissioner is authorized to form such a collection and to that end to accept, file, and classify such unregistered marks as may be entered as herein provided.
(a) Any mark (including a trade--mark, symbol, label, package, configuration of goods, name, word, or phrase) used in commerce and identifying any merchandise or business may be entered in the Patent Office by the user by filing one or more copies, facsimiles, or representations thereof, 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. Any person using, in commerce, any such mark, which shall not have been registered and for which no application for registration has been filed, who shall fail so to enter it within one year of the first use thereof in commerce, 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. There shall be excepted from the foregoing the trade names embraced in

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article 8 of the convention mentioned in section 6 hereof, but such trade names may be entered under this section at the option of the user thereof. Any user of a mark solely within a State may, at his option, enter the same under this section.
(b) The commissioner shall cause to be assembled for search purposes, in such form as the commissioner may determine, all marks--
(1) Now registered and which may hereafter be registered;
(2) For which applications for registration are pending:
(3) Which may be entered under this section; and
(4) Any other marks in actual use which the commissioner may direct.

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

The commissioner may remove from this collection abandoned marks, infringing marks, entries of abandoned marks, entries which have been antedated, and marks which are immoral, scandalous, or otherwise unlawful.
(c) The commissioner shall not accept for entry any mark already registered for the same goods. Entry of a mark shall not of itself be ground for rejection of an application for registration, but if an entered

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mark conflicts with an application for registration, the commissioner shall notify both the applicant and the entrant, and shall determine the rights of the parties.

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 3, but need not allege use in commerce.
(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

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unfair competition conferred by said convention. Rights of priority under such registrations shall be determined as provided in said convention.
(c) Foreign or alien owners of trade--marks used in this country shall, unless otherwise provided by treaty, 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, unless otherwise provided by treaty, shall be determined by their actual use of such trade--marks within the United States.

SEC. 7. Upon the filing of an application for registration of a trade--mark under sections 1 and 2 hereof, 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 may issue a certificate of registration therefor. If on examination an application is refused, the commissioner shall notify the applicant, giving

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his reasons therefor. Applications under section 3 shall not be published for opposition, but shall be published when registered. This section shall not apply to marks entered under section 5.

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 insurance 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 registration of the trade--mark of which such applicant may claim to be the owner, brought under the provision 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.

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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.
(b) Any applicant, if he so elect, in lieu of appealing to the Court of Appeals of the District of Columbia, may within six months after the decision of the commissioner transfer the case to a court of original jurisdiction, named in section 22, either in the district of his residence or in the district of the location of his principal place of business, 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 and proceed 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 maybe applicable, but all expenses of the proceeding, including the disbursements of the commissioner, shall be paid by the applicant whether the final decision is in his favor or not.

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

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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. In case of succession or change of ownership the commissioner may, upon a proper showing at the request of the owner or successor and upon the payment of a fee of $10, issue to such owner or successor a new certificate of registration of the said trade--mark in the name of such owner or successor.
(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) Copies of any records, books, papers, or drawings relating to trade--marks belonging to the Patent Office entries

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and of certificates of registration authenticated by the seal of the Patent Office and certified by the commissioner or in his name by a chief of division duly designated by the commissioner, 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.
(d) Whenever a mistake in a trade--mark registration, incurred through the fault of the Patent Office, is clearly disclosed by the records of the office, a certificate stating the fact and nature of such mistake, signed by the commissioner and sealed with the seal of the Patent Office, may be issued, without charge, and recorded in the records of trade--marks and a printed copy thereof attached to each printed copy of the trade--mark registration, and such certificate shall thereafter be considered as part of the original, and every trade--mark registration, together with such certificate, shall have the same effect and operation in law on the trial of all actions or causes thereafter arising as if the same had been originally issued in such corrected form. All such certificates heretofore issued in accordance with the rules of the Patent Office and the trade--mark registrations to which they are attached shall have the same force and effect as if such certificates had been specifically authorized by statute.

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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 requests by the registrant, 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 if the Acts under which they were issued had not been repeated, but they shall be renewable only under the provisions of this Act, and when so renewed shall have the same force and effect as certificates issued under this Act.

SEC. 12. An applicant for registration under this Act may claim the ownership of a trade--mark for only a limited portion of the territory of the United States, or in foreign commerce, in which case the commissioner may register the mark for such limited territory or commerce. When, in case of opposition or otherwise, two or more claimants of the same trade--mark shall by a written agreement or stipu--lation filed or recorded in the Patent Office specify the territory or commerce in which each shall be entitled to the 21 exclusive use of such mark, the commissioner may register the same mark to each such claimant for such limited territory or commerce, respectively. Each certificate of registration under this section shall be in terms restricted to the limited territory or commerce to which the registrant is entitled and refer to any other registration issued under this section.

SEC. 13. The following shall be the contested proceedings in the Patent Office:
(a) Opposition: Any person who would be damaged by the registration of a mark may oppose the same by filing notice of opposition in the Patent Office, in such form as the commissioner may by rule prescribe, 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 an authorized attorney, but shall be void unless ratified 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 is damaged by the registration of a trade--mark, except a person against whom a suit is pending thereunder, may at any time apply to the commissioner to cancel the registration thereof by

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filing a petition in the Patent Office in such form as the commissioner may by rule prescribe. Abandonment shall be among the grounds for cancellation. Voluntary nonuse by the registrant 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 so resembles a trade--mark previously registered or applied for by another 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 issues according to the common law or treaty rights of the parties, and under rules prescribed by the commissioner.
(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 refuse to register both of two interfering marks, or may register the trade--mark for the person entitled thereto.

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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.
(h) In any suit pending in a Federal court between the parties to a contested proceeding in the Patent Office involving the same trade--mark, the commissioner shall, on the request and at the expense of any party to such suit, certify and transmit to the clerk of the court a transcript of the record in such contested proceeding, including the testimony and exhibits, or such portion thereof as the parties may stipulate. The record so certified shall be treated as evidence in the suit.

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 or principal place of business of the adverse party, or

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if there are two or more such parties, then in the district of the residence or principal place of business 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.
(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 general jurisdiction of the controversy and of the parties.
(c) The court shall thereupon proceed de novo, direct the issues to be formulated by appropriate pleadings and 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,

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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 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 and be controlled thereby.
(g) In lien 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 or of any entry, and the court on due proceedings had may, according to the circumstances of the case, cancel such registration or entry in whole or in part and make any other or additional orders or decrees as provided in this section. Such decree shall be served upon the commissioner, who shall make appropriate entry upon the records of the Patent Office and be controlled thereby.

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

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same, shall be assignable in connection with the business and good will 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.
(b) If any such assignment be acknowledged before any notary public of a State 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 and whose authority shall be approved 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 and when recorded in the Patent Office such record shall be prima facie evidence of the execution of such assignment.

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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 issuing a new certificate under section 10, $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 entry under section 5, $2; on filing notice of opposition to the registration of a trade--mark or a petition for cancellation (except under section 10 (b)), $10; on filing a disclaimer or an amendment to a registration, $10; 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 one hundred words or fraction thereof, 10 cents; for each printed copy of registration and drawing,10 cents; for comparing other copies, 5 cents for every one hundred words or fraction thereof; for certifying in any case, additional, 75 cents; for each additional trade--mark or application which may be included under a single certificate, 25 cents additional; for recording every assignment or other paper of three hundred words or under, $1; of over three hundred and under one thousand words, $2; and for each additional thousand words or fraction thereof,

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$1; for each additional trade--mark or application included, or involved in one writing where more than one is so included or involved, additional, 25 cents.

SEC. 17. The commissioner is authorized to refund trade--mark fees paid by mistake or in excess.

SEC. 18. Any person who shall infringe in commerce any trade--mark registered under sections 1 and 2hereof shall be liable--
(a) To an injunction restraining infringement of such registered trade--mark.
(b) To pay to the owner such damages as he may have suffered from the infringement.
(c) To pay to the owner all profits which the infringer shall have made from such infringement, and improving profits the plaintiff shall be required to prove sales only, and the defendant 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

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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.
(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 non infringing matter, the objectionable contents thereof may be obliterated or otherwise removed as the court may direct.
(h) The remedy of injunction against infringement of a registered trade--mark may extend throughout the United States or any lesser territory, as may be determined by the court according to the circumstances of the case, and need not be limited to be merely coextensive with the territory within which the owner has used such registered

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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 marks deposited under section 5.
(k) Rules and regulations for practice and procedure under this section and under sections 9 (b), 14, and29 (c) may be prescribed by the Supreme Court of the United States.

SEC. 19. Any court given jurisdiction under this Act may, in any action, suit, or proceeding, 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 or any entry which may be involved therein, 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

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enter the same in 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 prevailing party, and the court may include a reasonable attorney's fees as part of the costs. Such allowances may also include costs and fees incurred in the Patent Office, to be certified by the commissioner, 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.

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 appeal of the United States and the Court of Appeals of the District of Columbia shall have appellate jurisdiction of all actions, suits, and proceedings concerning registrations and registered trade--marks 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 that they may be reviewed by the

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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 the judge granting the injunction shall, 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.

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, including union labels, collective marks, and the marks of associations, used in commerce, in the same manner and with the same effect, and when registered they shall be entitled to the same protection and remedies against infringement as provided herein in the case of trade--marks used upon goods. Applications under this section shall comply as nearly as practicable with the requirements of section 1.

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SEC. 25. 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.

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 file application for or procure registration or entry of a trade--mark in the Patent Office by a false or fraudulent declaration or representation, oral, written, or by any false means, shall be liable to pay any damages sustained in consequence thereof to the injured party, and such false declaration or representation shall constitute perjury.

SEC. 28. The commissioner may make rules and regulations, not inconsistent with law, concerning the registration and entry of trade--marks and practice in proceedings in the Patent Office. He may require nonregistrable matter to be disclaimed, but no such disclaimer shall affect any common law rights. He may establish a classification of

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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 in commerce. The commissioner may establish a classification under section 24 hereof.

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 United States or admitted to entry at any customhouse 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 18hereof, 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

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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.
(b) Any merchandise, whatever may be its source or origin, which shall bear the name or a simulation thereof of any domestic manufacture or manufacturer 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

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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.
(c) The owner, importer, or consignee of merchandise refused 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

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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.

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 admit--

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ted 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 have the remedy given by paragraphs (c), (d), and (e) of section 29.

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, 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 dis-

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tinguish 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 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 of trade--marks, trade names, and devices and applies such law, so far as concerns registered trade--marks, to commerce within the control of Congress, and in case of doubt its provisions are to be construed accordingly.

SEC. 32. This Act shall be in force and take effect sixty days after its passage. All Acts and parts of Acts inconsistent herewith are hereby repealed, including the following, namely: 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

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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, 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 registrations shall not be used to stop importations under section 29 of this Act. Sections 13 and 14 of this Act (except paragraph (a) of section 13) 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," and section 7 of the Act of June 15, 1916, entitled "An Act to incorporate the Boy Scouts of America, and for other purposes," are not repealed or affected by this Act.

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SEC. 34. There is hereby authorized to be appropriated, out of the money in the Treasury not otherwise appropriated, for clerical service, office equipment, stationery, and supplies for carrying into effect this Act for the fiscal year ending June 30, 1928, $50,000, and thereafter such sums as Congress may deem necessary, to be expended by the Commissioner of Patents.

SEC. 35. This Act may be cited as the "Trade--Mark Act, 1928."

70th Congress, 1st Session IN THE HOUSE OF REPRESENTATIVESMARCH 12, 1928

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. That the owner of a trade--mark in use in commerce within the control of Congress may register such trade--mark--