§ S. 895

TITLE I----THE PRINCIPAL REGISTER

SECTION 1. Trade--marks used in commerce may be registered in the following manner:
(a) By filing in the Patent Office--
(1) a written application, verified by the applicant, including a statement to the effect that the applicant believes himself, or the firm, corporation, or association in whose behalf he makes the application, to be the

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owner of the trade--mark sought to be registered, and that no other person, firm, corporation, or association, to the best of the applicant's knowledge and belief, has the right to use such trade--mark in the United States either in the identical form or in such near resemblance thereto as might be calculated to deceive, and specifying the date of first use of the mark, and the goods or services in connection with which it is used, in such form as may be prescribed by the Commissioner;
(2) a drawing of the mark; and
(3) such number of specimens or facsimiles of the mark as actually used as may be required by the Commissioner.
(b) By paying into the Patent Office the filing fee.
(c) By complying with such rules or regulations, not inconsistent with law, as may be prescribed by the Commissioner.
(d) If the applicant is not domiciled in the United States he shall designate by a written document filed in the Patent Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving a copy thereof at the last address so filed. If the person so designated cannot be found at the address given in the desig

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nation, such notice or process may be served upon the Commissioner.

MARKS REGISTRABLE ON THE PRINCIPAL REGISTER

SEC.. 2. No mark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration as a trade--mark on account of its nature unless it--
(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which tends to disparage
persons, living or dead, institutions, beliefs, or national symbols, or to bring them into contempt;
(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 name, portrait, or signature of a living individual unless by his written consent;
(d) Consists of or comprises a mark which so resembles a mark previously registered or used by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive purchasers;

(e) Consists of a mark which, (1) when applied to the goods of the applicant is merely descriptive of them, (2) when applied to the goods of the applicant is primarily geo

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graphically descriptive of them, except as indications of regional origin may be registrable under section 4 hereof, (3) is primarily merely a surname.
(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 by the applicant as a trade--mark which has become distinctive of the applicant's goods in commerce. Substantially exclusive use as a mark by applicant, in commerce for two years prior to the application, may be accepted by the Commissioner as prima facie evidence of distinctiveness.

SERVICE AND CERTIFICATION MARKS REGISTRABLE

SEC. 3. Subject to the same provisions relating to the registration of trade--marks, so far as they may be applicable, service and certification marks used in commerce shall be registrable, in the same manner and with the same effect, and when registered they shall be entitled to the protection provided herein in the case of trade--marks. The Commissioner may establish a separate register for such service and certification marks. Applications and procedure under this section may conform as nearly as practicable to those prescribed for the registration of trade--marks.

COLLECTIVE AND ASSOCIATION MARKS REGISTRABLE

SEC. 4. Subject to the provisions relating to the registration of trade--marks, so far as they may be applicable

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collective marks, including indications of regional origin, used by natural or juristic persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the mark sought to be registered, even though not possessing an industrial or commercial establishment, shall be registrable under this Act in the same manner and with the same effect, and when registered they shall be entitled to the protection provided herein in the case of trade--marks.

USE BY RELATED COMPANIES

SEC. 5. Where the registered mark or the mark sought to be registered is or may be used by subsidiary or related companies, or by the members of an association, such use shall be deemed exclusive in the holding, parent, or related company or in the association; and use of registered marks by companies subsidiary or related to the registrant or by the members of an association, shall not affect the validity of such mark or of its registration. Such mark shall not be used in such manner as to deceive the public.

DISCLAIMERS

SEC. 6. The Commissioner may require unregistrable matter to be disclaimed, but such disclaimer shall not prejudice or affect the applicant's or owner's rights then existing or thereafter arising in the disclaimed matter, nor shall such disclaimer prejudice or affect the applicant's or owner's right of registration on another
application of later date if

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the disclaimed matter has become distinctive of the applicant's goods. CERTIFICATES

SEC. 7. (a) Certificates of registration of marks registered upon the principal register 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 a record thereof, together with printed copies of the drawing and statement of the applicant, shall be kept in books for that purpose. The certificate shall state the date on which the application for registration was received in the Patent Office.
(b) The certificate of registration of a mark upon the principal register provided by this Act shall be prima facie evidence of the validity of the mark and of registrant's exclusive right to use the same in commerce.
(c) Certificates of registration of marks may be issued to the assignees of the applicant, but the assignment must first be recorded in the Patent Office. In case of succession or change of ownership the Commissioner shall, upon a proper showing at the request of the owner or successor and upon the payment of the fee herein provided, issue to such owner or successor a new certificate of registration of

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the said mark in the name of such owner or successor, and for the original period.
(d) The Commissioner, upon application of the registrant, may permit any registration under this or any previous Act to be canceled or for good cause to be amended or disclaimed in whole or in part, at any time upon payment of the required fee: Provided. That the Commissioner shall determine that when so amended it shall still contain registerable matter and not require republication, and the Commissioner shall make appropriate entry upon the records of the Patent Office and upon the certificate of registration, or if said certificate is lost or destroyed upon a certified copy thereof.
(e) Copies of any records, books, papers, or drawings belonging to the Patent Office relating to marks, and copies 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.
(f) Whenever a mistake in a registration, incurred through the fault of the Patent Office, is clearly disclosed by the records of the Office a certificate stating the fact and

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nature of such mistake, signed by the Commissioner and sealed with the seal of the Patent Office, may be issued, without charge, and recorded and a printed copy thereof attached to each printed copy of the registration, and such certificate shall thereafter be considered as part of the

original, and every 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 registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.
(g) Whenever a mistake has been made in a registration certificate and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Commissioner is authorized to issue a certificate of correction upon the payment of the required fee, provided the Commissioner shall determine that the correction is not such as to necessitate republication of the mark.

DURATION

SEC. 8. Each certificate of registration shall remain in force for twenty years: Provided. That the registration of any mark under the provisions of this Act shall be can--

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celed at the end of five years following its date, unless within three months next preceding the expiration of such five years the registrant shall file in the Patent Office an affidavit in such form as may be prescribed by the Commissioner stating that said mark is still in use. If, however, nonuse is due to special circumstances and not to any intention not to use or to abandon such mark, the affidavit shall so state, in which case the registration shall not be canceled because of such nonuse. Forms for such affidavits shall be attached to each certificate of registration.

RENEWAL

SEC. 9. On application of the registrant, certificates of registration may be renewed for like periods of twenty years from the end of the expiring period on payment of the renewal fees required by this Act if the registered mark is still in use; and such application may be made at any time within six months before the expiration of the period for which the certificate of registration was issued or renewed, or may be made within three months after such expiration on payment of an additional fee as herein provided.
If the applicant for renewal is not domiciled in the United States, he shall designate by a written document filed in the Patent Office the name and address of some person resident in the United States on whom may be served notices

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or process in proceedings affecting the mark, in the same way as provided in subsection (d) of section 1 of this Act.

ASSIGNMENT

SEC. 10. A registered mark or a mark for which application has been filed shall be assignable upon such terms and conditions as the parties may agree. Assignments shall be by instruments in writing duly executed. Acknowledgement shall be prima facie evidence of the execution of the

assignment and when recorded in the Patent Office the record shall be prima facie evidence of execution. An 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 assignments. If the assignee is not domiciled in the United States, he shall designate by a written document filed in the Patent Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark, in the same way as provided in subsection (d) of section 1 of this Act.

SEC. 11. Any acknowledgment or verification shall be valid if it complies with the laws of the State or country where it is made.

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PUBLICATION

SEC. 12. Upon the filing of an application for registration and payment of the fees herein provided, the Commissioner shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, the Commissioner shall cause the mark to be published at least once in the Official Gazette of the Patent Office.

OPPOSITION

SEC. 13. Any person who would be damaged by the registration of a mark may, upon payment of the required fee, file a verified notice of opposition in the Patent Office stating the grounds therefor within thirty days after the publication in the Official Gazette of the mark sought to be registered. For good cause shown, the time for filing notice of opposition may be extended by the Commissioner. An unverified opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless verified by the opposer within a reasonable time after such filing to be fixed by the Commissioner.

CANCELATION

SEC. 14. Whenever any person is damaged by the registration of a mark under this Act, he may, within ten years from the date of such registration, apply to cancel the

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registration thereof. If a registered mark has been abandoned or its registration was obtained fraudulently, or contrary to the provisions of section 2, subsections (a), (b), or (c) hereof, application for its cancelation may be made at any time. In the case of marks registered under the Acts of February 20, 1905, and March 3, 1881, the ten--year period shall begin from the effective date of this Act.

SEC. 15. After the period for the cancelation of the registration of a trade--mark has expired, the right of the registrant to use his mark as theretofore used in commerce shall be incontestable.

INTERFERENCE

SEC. 16. Whenever application is made for the registration of a mark which in the opinion of the Commissioner so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods of the applicant, to cause confusion or mistake or to deceive purchasers, the Commissioner may declare that an interference exists. No interference shall be declared between an application and a mark the right to use of which has become incontestable.

SEC. 17. If, after due proceedings, it shall appear that there has been in commerce an honest concurrent use of the same or similar marks for the same or similar goods or services

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for a continuous period of more than five years immediately preceding the date of a pending application by one of such users for the registration of one of such marks, without protest by any other such user within said period, the Commissioner, or on appeal the United States Court of Customs and Patent Appeals, or the court in an action begun under the provisions of section 4915, Revised Statutes, may grant more than one registration of such marks, subject to such conditions and limitations, if any, as to mode or place of use of such marks as the Commissioner or said courts, or either of them, may require in order to minimize the probability of confusion arising from the concurrent use of such marks.
The provisions of this section shall also govern cases heretofore begun in the Patent Office, and not finally determined, where the provisions thereof may be applicable.
In any case in which an appeal is pending before the United States Court of Customs and Patent Appeals at the date of the enactment of this Act, the said court, if it be of the opinion that the provisions of this section may be applicable to the subject matter of the appeal, may remand the case to the Commissioner for the taking of additional evidence or for reconsideration of his decision on the record as made as the court may deem proper.
In any case in which an appeal is pending before the United States Court of Appeals for the District of Columbia

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at the time of the enactment of this Act, the said court, if it be of the opinion that the provisions of this section may be applicable to the subject matter of the appeal, may remand the case to the District Court for the District of Columbia for a new trial or for reconsideration of its decision on the record as made, as the appellate court may deem proper.

SEC. 18. In every case of interference, opposition to registration, application to register as an honest concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct the examiner in charge of interferences to determine the right of registration.

SEC. 19. The Commissioner may refuse to register the opposed mark, may cancel the registration of a registered mark, or may refuse to register any or all of several interfering marks, or may register the mark for the person or persons entitled thereto, as the rights of the parties may be established in the proceedings.

(a) In all inter partes proceedings the doctrine of laches and acquiescence, where applicable, shall be considered and applied. The provisions of this section shall also govern cases heretofore begun in the Patent Office and not finally determined, and the provisions of section 17 respecting remands shall be applicable to this section.

SEC. 20. Appeal may be taken to the Commissioner

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in person from the final decision of the examiner of interferences. Appeals may also be taken to the Commissioner in person from all final decisions of the examiner in charge of trade--marks.

SEC. 21. If an applicant for registration of a mark, or a party to an interference as to a mark, or party who has filed opposition to the registration of a mark, or a party to an application to register as an honest concurrent user, or party to an application for the cancelation of the registration of a mark, is dissatisfied with the decision of the Commissioner of Patents, he may appeal to the United States Court of Customs and Patent Appeals on complying with the conditions required in case of an appeal from the decision of the Board of Appeals by an applicant for a patent or a party to an interference as to an invention, and the same rules of practice and procedure shall govern in every stage of such proceedings as far as the same may be applicable. The provisions of section 4915 of the Revised Statutes shall apply in trade--mark cases. The same right of review as provided in said section 4915 shall be accorded to all parties to interference opposition and cancelation proceedings.

REGISTRATION IS NOTICE

SEC. 22. Registration of a mark under this Act and the Acts of March 3, 1881, February 20, 1905, and March 19, 1920, is notice of the registrant's claim of ownership thereof.

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TITLE II----THE SUPPLEMENTAL REGISTER

SEC. 23. In addition to the principal register, the Commissioner shall keep a continuation of the register provided in 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", to be called the supplemental register. All marks not registrable on the principal register herein provided, except those declared to be unregistrable under paragraphs (a), (b), (c), and (d) of section 2 of this Act, which have been in bona fide use for not less than one year in commerce by the proprietor thereof, upon or in connection with any goods of such proprietor, may be registered on the supplemental register upon payment of the filing fee to the Commissioner of Patents and compliance with such formalities as the said Commissioner may require: Provided. That a mark which so resembles a known mark owned and used in commerce by another, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive purchasers, shall not be placed on this register: And

provided further. That where the mark so to be registered is or may be used by subsidiary or related companies or by members of an association,

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such use shall be deemed exclusive in the holding or parent company or in the association, for the purposes of the application and for all other purposes; and use of registered marks by companies subsidiary or related to the registrant or by the members of an association, shall not affect the validity of such trade--mark or of its registration.
For the purposes of this register, a mark may include a trade--mark, symbol, label, package, configuration of goods, name, word, slogan, or phrase, but such mark must be capable of distinguishing the applicant's goods.
Collective marks, including indications of regional origin, used by natural or juristic persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the mark sought to be registered, even though not possessing an industrial or commercial establishment, shall be registrable under this section: Provided further. That upon a proper showing by the applicant that he has begun the bona fide use of his mark in foreign commerce and that he requires domestic registration as a basis for foreign protection of this mark, the Commissioner may waive the requirement of a full year's use and may grant registration forthwith. Appeal may be had to the Commissioner from a refusal of the Examiner of Trade--Marks to register a mark on the supplemental register, but the decision of the Commissioner shall not be appealable.

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CANCELATION

SEC. 24. Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration. Whenever any person shall deem himself injured by the inclusion of a mark on this register, he may at any time apply to the Commissioner of Patents to cancel the registration thereof. The Commissioner shall refer such application to the examiner in charge of interferences, who is empowered to hear and determine this question, and who shall give notice thereof to the registrant. If it appear after a hearing before the examiner that the registrant was not entitled to register the mark at the date of his application for registration thereof, or that the mark is not used by the registrant or has been abandoned, and the examiner shall so decide, the Commissioner shall cancel the registration. Appeal may be taken to the Commissioner in person from the decision of the examiner in charge of interferences, but the decision of the Commissioner shall not be appealable.

DURATION AND RENEWAL

SEC. 25. Registrations on the supplemental register shall remain in force for twenty years: Provided. That the registration of any mark on the supplemental register shall be canceled at the end of five years following its date, unless within three months next proceding the expiration of such

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five years the registrant shall file in the Patent Office an affidavit in such form as may be prescribed by the Commissioner stating that said mark is still in use. If, however, nonuse is due to special circumstances and not to any intention not to use or to abandon such trade--mark, the affidavit shall so state, in which case the registration shall not be canceled because of such nonuse. Forms for such affidavits shall be attached to each certificate of registration. Registrations on the supplemental register may be renewed as provided in section 9 of this Act.

GENERAL PROVISIONS

SEC. 26. The provisions of paragraphs (a), (c), (e), (f), and (g) of section 7, the provisions of section 10, and the provisions of sections 11 and 22 of this Act, are hereby made applicable to registrations on the supplemental register.

SEC. 27. Registration on the supplemental register, or under the Act of March 19, 1920, or expiration under section 25 hereof, shall not preclude registration by registrant on the principal register established by this Act.

SEC. 28. Registration on the supplemental register or under the Act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations. The certificates of registration for marks registered on the supplemental register shall be conspicuously different in

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appearance from certificates issued for marks registered on the principal register.

TITLE III----NOTICE OF REGISTRATION

SEC. 29. It shall be the duty of the registrant to accompany a mark registered under the Act of February 20, 1905, or under section 1 (b) of the Act of March 19, 1920, or under this Act, with the words "Registered in U.
S. Patent Office" or "Reg. U. S. Pat. Off." or with the letter R enclosed within a circle, thus, R. or T.M.R. in an ellipse thus, T.M.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 unless the defendant had actual notice: Provided, however. That the foregoing requirement as to notice shall be deemed fulfilled in respect to goods of foreign origin if the marks thereon which are registered in the United States carry the words or indications of registration legally used or required to be used in the country of origin of the goods.

TITLE IV----CLASSIFICATION

SEC. 30. The Commissioner may establish a classification of merchandise, services, and so forth, for convenience of Patent Office administration, but not to limit or extend the applicant's rights. The applicant may register his mark in one application for any or all of the goods included in one class, upon which he has actually used the mark. The Com-

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missioner may issue a single certificate for one mark registered in a plurality of classes upon payment of a fee equalling the sum of the fees for each registration in each class.

TITLE V----FEES AND CHARGES

SEC. 31. Fees payable to the Patent Office under this Act shall be as follows: On filing each original application for registration of a mark in either the principal or the supplemental register, $15; on filing each application for renewal, $15; and on filing each application for renewal after expiration of the registration, an additional fee of $5; on filing notice of opposition or application for cancelation, $10; on appeal from the examiner in charge of trade--marks to the Commissioner, $20; on appeal from the examiner in charge of interferences to the Commissioner, $20; for issuance of a new certificate of registration following change of ownership of a mark, $10; for certificate of correction of registrant's mistake, $10; for filing each application communicated to the United States from the International Bureau, Habana, $15; for filing and transmitting application to the International Bureau, Habana, including certificate, $10; for manuscript copies, for every one hundred words or fraction thereof, 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 registration or application which may be included under a single

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certificate, 25 cents additional; for each additional registration or application included, or involved in one writing where more than one is so included or involved, additional 50 cents; for filing disclaimer after registration, $10.
For abstracts of title: For the search, one hour or less, and certificate, $3; each additional hour or fraction thereof, $1.50; for each brief from the digest of assignments of two hundred words or less, 50 cents; each additional one hundred words or fraction thereof, 10 cents.
For certificate that trade--mark has not been registered----search and certificate (for deposit in foreign countries only), $3. For title reports required for office use, $1. For a single printed copy of statement and drawing, 10 cents; if certified, for the grant, additional 50 cents; for the certificate, 50 cents; if renewed, for copy of certificate of renewal, additional 50 cents. For photographic copies of records, per copy, 20 cents; if certified, for the certificate, additional 50 cents. For photographic copies of drawings, per sheet, 20 cents. For recording every assignment, power of attorney, or other paper not exceeding six pages, $3; for each additional two pages or less, $1. The Commissioner is authorized to refund fees paid by mistake or in excess.

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TITLE VI----REMEDIES

SEC. 32. Any person who shall, in commerce, without the consent of the registrant, (a) reproduce, counterfeit, copy, or colorably imitate any mark on either register provided by this Act, or (b) shall apply such reproduction, counterfeit, copy, or colorable imitation to merchandise or services of such a character that the use thereof is likely to cause confusion or mistake or to deceive purchasers, or to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale of such merchandise or

services, or (c) shall otherwise use such reproduction, counterfeit, copy, or colorable imitation falsely to indicate that the goods or services are the goods or services of a person who shall have registered a mark under this Act, shall be liable in a civil action by the registrant for any or all of the remedies hereinafter provided.
In such action any certificate of registration on the principal register issued under this Act and owned by the plaintiff shall be admissible in evidence and shall be prima--facie evidence of plaintiff's exclusive right to the use of the mark therein described on the goods therein specified. If the right to use the mark has become incontestable under section 15 hereof, the certificate shall be evidence of the registrant's exclusive right to use the mark which can be rebutted only by proof that the registration was obtained.

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fraudulently or that the mark has been abandoned by the registrant, or by proof of one of the following defenses:
(1) That the mark whose use by the defendant, or those in privity with him, is charged as an infringement has been continuously used by the defendant or by his predecessors in business in the State or States where its use is charged to infringe from a date prior to the use by the registrant or his predecessors of the trade--mark described in the registration: Provided. That when prior use shall have been established in the defendant or his predecessor, he shall be entitled to the exclusive development of his mark within the territory which he now holds.
(2) That the use by the defendant of the mark charged to be an infringement is a fair use of the defendant's individual name in his own business in a manner not calculated to deceive the public, or is a fair use of the only known descriptive term for goods rightfully sold by the defendant.
(3) If goods have been put on the market by the registrant of a mark registered under this Act or under any or the prior Acts enumerated in section 46 hereof, in a package or other container bearing such mark, and said goods, or any part thereof, have been transferred, without the authority of the registrant, to another package or container, or if said goods have been in any way altered, it shall be unlawful and an infringement of such registered mark to make

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any use of or reference to such registered mark on or in connection with such altered or transferred goods or on or in connection with any packages or containers or display devices therefor, in the selling or displaying or offering for sale of any of the altered or transferred goods.

SEC. 33. The several courts vested with jurisdiction of civil actions arising under this Act shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered under this Act. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, or by a judge thereof, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, 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 district court, or judge thereof, in the United States, or by the District Court of the United States for the District of Columbia, or a judge thereof. The said courts, or judges thereof, shall have jurisdiction to enforce said injunction, as herein provided, as fully as if the injunction had been granted by the

district court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall,

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when required 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 all papers on file in his office, upon which said injunction was granted. And it shall be the duty of the clerks of such courts within one month after the filing of any action, suit, or proceeding arising under the provisions of this Act to give notice thereof in writing to the Commissioner of Patents, setting forth in order so far as known the names and addresses of the litigants and the designating number or numbers of the registration or registrations upon which the action, suit, or proceeding has been brought, and in the event any other registration be subsequently included in the action, suit, or proceeding by amendment, answer, cross--bill, or other pleading, the clerk shall give like notice thereof to the Commissioner of Patents, and within one month after the decision is rendered or a decree issued the clerk of the court shall give notice thereof to the Commissioner of Patents, and it shall be the duty of the Commissioner of Patents on receipt of such notice forthwith to endorse the same upon the file wrapper of the said registration or registrations and to incorporate the same as a part of the contents of said file or file wrapper; and for each notice required to be furnished to the Commissioner of Patents in compliance

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therewith a fee of 50 cents shall be taxed by the clerk as costs of suit.

SEC. 34. Whenever the plaintiff shall have established his right to relief in any civil action arising under this Act, he shall be entitled (subject to the provisions of section 29) to recover (1) defendant's profits, (2)any damages sustained by the plaintiff, and (3) in the discretion of the court the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may, according to the circumstances of the case, enter judgment for any sum above the amount found as actual damages, not exceeding three times such amount, such sum to constitute compensation and not a penalty.

SEC. 35. In any civil action arising under this Act, in which the plaintiff shall have established his right to relief, the court may order that all labels, signs, prints, packages, wrappers, receptacles, or advertisements in the possession of the defendant, bearing the mark of the plaintiff or any reproduction, counterfeit, copy, or colorable imitation thereof,

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and all plates, molds, matrices, or other means of making the same, shall be delivered up and destroyed.

SEC. 36. In any action the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register. Decrees and orders shall be certified by the court to the Commissioner, who shall make appropriate entry upon the

records of the Patent Office, and shall be controlled thereby.

SEC. 37. Any person who shall procure registration of a mark in the office of the Commissioner of Patents by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.

SEC. 38. The district and territorial courts of the United States and the District Court of the United States for the District of Columbia shall have original jurisdiction, and the circuit courts of appeal of the United States and the United States Court of Appeals for the District of Columbia shall have appellate jurisdiction, of all civil actions arising under this Act respecting trade--marks registered in accordance with the provisions of this Act, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties.

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SEC. 39. Writs of certiorari may be granted by the Supreme Court of the United States for the review of cases arising under this Act in the same manner as provided for in cases under the patent laws.

SEC. 40. The Commissioner of Patents is authorized to make rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office under this Act.

CRIMINAL OFFENSES

SEC. 41. Knowingly to introduce or deliver for introduction or to receive in commerce any counterfeit of any mark upon the principal register or knowingly to transport such counterfeit in commerce shall be a misdemeanor punishable by a fine not exceeding $1,000 or imprisonment not exceeding six months, or both such fine and imprisonment.
Any person who shall introduce in commerce goods bearing a legend falsely indicating that the mark thereof is registered in the United States Patent Office, shall be guilty of a misdemeanor and shall be subject to a fine of not less than $100.

TITLE VII--IMPORTATION FORBIDDEN OF GOODS BEARING INFRINGING MARKS OR NAMES

SEC. 42. (a) Any merchandise, whatever may be its source or origin, which shall bear any registered mark or any infringement thereof, except a mark registered under

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section 1(b) of the Act of March 19, 1920, or in the supplemental register provided by this Act, 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 provision 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 for

infringement provided in this Act and, in addition, be required to export or destroy such merchandise or to remove or obliterate such infringing mark therefrom, and such merchandise shall be subject to seizure and forfeiture for violation of the customs laws: Provided. That in order to aid the officers of customs in enforcing this paragraph, the registrant or owner of the trade--mark shall record the trade--mark in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe.
(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

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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: Provided. That in order to aid the officers of customs in enforcing this paragraph, such domestic or foreign manufacturer or trader shall record his trade or commercial name in the Department of the Treasury, under such regulations as the Secretary of the Treasury may prescribe.
(c) The owner, importer, or consignee of merchandise refused entry or seized under paragraphs (a) or (b) of this section may have relief against the registrant, manufacturer, or trader by a summary proceeding in any United States court of original jurisdiction, in the district where such merchandise is held or where such registrant, manufacturer, or trader or a designated representative is an inhabitant or may be found, or, if the registrant is a foreigner and no such des-

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ignation has been filed, then in the District of Columbia, and after such notice and upon such proceedings as the court may direct the court may determine whether the plaintiff 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, 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) An order or decree for either party, whether interlocutory or final, shall be appealable within thirty days, and the court making such order or decree may, in its discretion, suspend the operation thereof pending appeal.

TITLE VIII----FALSE DESIGNATION OF ORIGIN AND FALSE DESCRIPTIONS FORBIDDEN

SEC. 43. (a) 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

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

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to be transported, shall be liable to a civil action 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 association of such persons 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.
(b) 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 have the remedy given by this Act in cases involving merchandise refused entry or seized.

TITLE IX----INTERNATIONAL CONVENTIONS

SEC. 44. (a) The Commissioner shall keep a register of all marks communicated to him by the international bureaus provided for by the Conventions for the Protection of Industrial Property, trade--marks, commercial and trade names, and the repression of unfair competition to which the United States is or may become a party, and upon the payment of the fees required by such conventions and the fees herein prescribed may place the marks so communi--

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cated upon such register. This register shall show a facsimile of the mark or name; the name and residence of the registrant; the number, date, and place of the first registration of the mark, 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 the registration in the country of origin, and such other data as may be useful concerning the mark. This register shall be a continuation of the register provided in section (a) of the Act of March 19, 1920.
(b) Persons nationals of, or domiciled in, or having a bona fide and effective business or commercial establishment in any country, which is party to the International Convention for the Protection of Industrial Property, concluded at Paris on March 20, 1883, or to any subsequent revision thereof, as well as to the convention between American republics concerning the protection of trade--marks and trade names and the repression of unfair competition, to which the United States is also a party, by the proclamation of February27, 1931, shall be entitled to the benefits and subject to the provisions of this Act except as provided in the following paragraphs of this section.
(c) No registration of a mark in the United States by a person described in paragraph (b) of this section shall be perfected until such mark has been registered in the coun--

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try of origin of the applicant, except when such country makes no such requirement of nationals or residents of the United States or the applicant alleges use in commerce.

For the purposes of this section, the country of origin of the applicant is the country in which he has a bona fide and effective industrial or commercial establishment and, in the case of associations, the country in which the association has its domicile or its principal office.
(d) An application for registration of a mark under sections 1 or 23 of this Act filed by a person described in paragraph (b) of this section who has previously duly filed an application for registration of the same mark in one of the countries described in paragraph (b) shall be accorded the same force and effect as would be accorded to the same application if filed in the United States on the same date on which the application was first filed in such foreign country: Provided. That--
(1) the application in the United States is filed within six months from the date on which the application was first filed in the foreign country;
(2) the application conforms as nearly as practicable to the requirements of this Act, but use in commerce need not be alleged;
(3) the applicant files a certified copy of the appli-

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cation filed in the foreign country: And provided further. That--
(4) the rights acquired by third parties before the day of the first application in the foreign country shall in no way be affected by the registration obtained on the application under this paragraph; and
(5) nothing in this paragraph shall entitle the foreign applicant to sue for infringement of his mark prior to the date on which his mark was registered in this country unless the registration is based on use in commerce.
(e) A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible, otherwise on the supplemental register herein provided. The application shall be accompanied by a certified copy of the registration in the country of origin of the applicant.
(f) The registration of a mark under the provisions of paragraphs (c), (d), and (e) of this section by a person described in paragraph (b) shall be independent of the registration in the country of origin and the duration, validity, or transfer in the United States of such registration shall be governed by the provisions of this Act.
(g) Trade names of persons described in paragraph

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(b) of this section used in commerce shall be protected in accordance with the provisions of this Act.
(h) Any person designated in paragraph (b) of this section as entitled to the benefits and subject to the provisions of this Act, shall be entitled to effective protection against unfair business competition, and in repressing acts of unfair competition, the remedies provided herein against infringement of trade--marks shall be available so far as they may be appropriate.
(i) Citizens or residents of the United States shall have the same benefits as are granted by this section to persons described in paragraph (b) hereof.

TITLE X----CONSTRUCTION AND DEFINITIONS

SEC. 45. In the construction of this Act, unless the contrary is plainly apparent from the context-
The United States includes and embraces all territory which is under its jurisdiction and control.
The word "commerce" means all commerce which may lawfully be regulated by Congress.
The term "person" and any other word or term used to designate the applicant or other entitled to a benefitor privilege or rendered liable under the provisions of this Act includes a juristic person as well as a natural person.
The term "juristic person" includes a firm, corporation, associa--

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tion or similar organization capable of suing and being sued in a court of law.
The terms "applicant" and "registrant" embrace the legal representatives and successors and assigns of such applicant or registrant.
The term "Commissioner" means the Commissioner of Patents.
The term "related company" means any individual, partnership, or person within the definition above where by ownership, or contractual relationship, control of the nature and quality of the goods upon which the mark is used is exercised by the registrant.
The terms "trade--mark" and "mark" include any mark which is entitled to registration under the terms of this Act and whether registered or not. "Service marks" are marks so used as to distinguish the user's services of any nature from the similar or related services of others. "Certification marks" are marks indicating that the goods in connection with which they are used are certified by the registrant as to origin, material, mode of manufacture, quality, accuracy, or other characteristic. There may be included in the category of certification marks the marks of labor unions and other associations. "Collective marks" means marks lawfully used by two or more persons.
For the purposes of this Act a mark shall be deemed to

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be applied to an article when it is placed in any manner in or upon either the article or its container or display or upon tags or labels or is otherwise used in the advertisement and sale thereof in commerce.
A mark shall be deemed to be "abandoned"--
(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Discontinuance of use for two years shall be prima facie abandonment.
(b) When any conduct of the registrant causes the mark to lose its significance as an indication of origin.
The term "colorable imitation" includes any mark which so resembles a mark registered under this Act as to be likely to cause confusion or mistake or to deceive purchasers.
A "counterfeit" is a mark which is identical with, or substantially indistinguishable from, a registered mark.

Words used in the singular include the plural, and vice versa.
The intent of this Act is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State legislation; to protect persons engaged

in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions,

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copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trade--marks and unfair competition entered into between the United States and foreign nations.

TITLE XI----REPEAL OF PREVIOUS ACTS

SEC. 46. This Act shall be in force and take effect sixty days from its enactment, but except as otherwise herein specifically provided shall not affect any suit, proceeding, or appeal then pending. 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 (U.S.C., title 15, secs. 81 to 109, inclusive), entitled "An Act to authorize the registration of trade--marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same", and the amendments thereto by the Acts of May 4, 1906 (U.S.C., title 15, secs. 131 and132; 34 Stat. 169), March 2, 1907 (34 Stat. 1251, 1252), February 18, 1909 (35 Stat. 627, 628), February 18,1911 (36 Stat. 918), March 3, 1911 (36 Stat. 1167), January 8, 1913 (37 Stat. 649), June 7, 1924 (43 Stat.647),

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March 4, 1925 (43 Stat. 1268, 1269), April 11, 1930 (46 Stat. 155); Act June 10, 1938 (Public, Numbered586, Seventy--fifth Congress, ch. 332, third session); the Act of March 19, 1920 (U.S.C., title 15, secs. 121to 128, inclusive), 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 the amendments thereto, including Act June 10, 1938 (Public, Numbered 586, Seventy--fifth Congress, ch. 332, third session); and section 526 of the Tariff Act of 1930 (U.S.C., title 19, sec. 1526), except that this repeal shall not affect the validity of registrations under said Acts, respectively, or rights or remedies thereunder.
Registrations now existing under the Act of February 20, 1905, shall continue in full force and effect for the unexpired term thereof and may be renewed under the provisions of section 9 of this Act. Such registrations shall be subject to and shall be entitled to the benefit of the provisions of this Act relating to marks registered on the principal register established by this Act. Marks registered under the "ten--year proviso" of section 5 of the Act of February 20, 1905, as amended, shall be deemed to have become distinctive of the registrant's goods in commerce under paragraph

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(f) of section 2 of this Act and may be renewed under section 9 hereof as trade--marks coming within said paragraph.

Registrations now existing under the Act of March 19, 1920, shall expire in twenty years from the date of registration and may not be renewed unless renewal is required to support foreign registrations. In that event renewal may be effected under the provisions of section 9 of this Act. Such registrations shall be subject to and entitled to the benefit of the provisions of this Act relating to marks registered on the supplemental register established by this Act. Such registrations shall be subject to and entitled to the benefit of the provisions of this Act relating to marks registered on the supplemental register established by this Act. Marks registered under previous Acts may, if eligible, also be registered under this Act.

SEC. 47. Section 4 of the Act of January 5, 1905 (U.S.C., title 36, sec. 4), as amended, entitled "An Act to incorporate the National Red Cross", and section 7 of the Act of June 15, 1916 (U.S.C., title 36, sec. 27), entitled "An Act to incorporate the Boy Scouts of America, and for other purposes", and the Act of June 20, 1936 (U.S.C., title 22, sec. 248), entitled "An Act to prohibit the commercial use of the coat of arms of the Swiss Confederation", are not repealed or affected by this Act.

SEC. 48. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.