HR 2283

77TH CONGRESS 2d Session

HOUSE OF REPRESENTATIVES REPORT No. 2283

PROVIDING FOR THE REGISTRATION OF TRADE--MARKS USED IN COMMERCE, TO CARRY OUT THE PROVISIONS OF CERTAIN INTERNATIONAL CONVENTIONS, AND FOR OTHER PURPOSES JUNE 25, 1942.----Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. LANHAM from the Committee on Patents submitted the following

REPORT

[To accompany S. 895] The Committee on Patents, to whom was referred the bill (S. 895) to provide for the registration of trade--marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass. The amendments are as follows:

Page 1, line 4, strike out "Trade--marks", and insert "The owner of a trade--mark".
Page 1, line 4, after the word "may", strike out "be registered in the following manner:", and insert "register his trade-mark under this Act on the principal register hereby established:". Page 1, line 7, after "application," insert "in such form as may be prescribed by the Commissioner,".
Page 1, line 7, after "applicant," insert:
or by a member of the firm or an officer of the corporation or association applying, specifying applicant's domicile and citizenship, the date of applicant's first use of the mark, the date of applicant's first use of the mark in commerce, the goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods, and.
Page 1, line 8, strike out "applicant" and insert "person making the verification".
Page 1, line 10, strike out "application" and insert "verification".
Page 2, line 1, strike out "trade--".
Page 2, line 1, after "registered," insert "that the mark is in use in commerce,".
Page 2, line 3, after "of", strike out "the applicant's", and insert "his".
Page 2, line 4, strike out "trade."; also strike out "the United States" and insert "commerce".

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Page 2, line 5, after "form" insert "thereof".
Page 2, line 6, after the word "deceive" insert a colon, strike out the remainder of line 6, and all of lines 7, 8 and 9, and insert--
Provided. That in the case of every application claiming concurrent use the applicant shall state exceptions to his claim of exclusive use, in which he shall specify, to the extent of his knowledge, any concurrent use by others, the goods or services in connection with which and the areas in which each concurrent use exists, the periods of each use, and the goods and area for which the applicant desires registration;
Page 2, line 23, after "leaving" insert "with him or mailing to him".

Page 2, line 24, strike out "last" and insert after "address" "specified in the last designation". Page 2, line 25, after "the" second occurrence insert "last".
Page 3, line 4, after "No" insert "trade--".
Page 3, line 6, strike out "as a trade--mark" and insert in lieu "on the principal register."
Page 3, line 9, strike out "tends to" and insert in lieu "may"; after "disparage" insert "or falsely suggest a connection with".
Page 3, line 11, strike out "to"; strike out the semicolon at the end of the line, insert a comma and add "or disrepute."
Page 3, line 15, strike out the semicolon and insert a period.
Page 3, line 16, strike out "the" and insert in lieu "a".
Page 3, line 17, strike out "of a" and insert in lieu "identifying a particular"; strike out "unless" and insert in lieu "except"; strike out the semicolon insert a comma and add "or the name, signature, or portrait of a deceased president of the United States during the life of his widow, if any, except by the written consent of the widow."
Page 3, line 19, strike out "previously"; after "registered" insert "in the Patent Office or a mark or trade name previously"; strike out "or"; after "used" insert "in the United States". Page 3, line 22, strike out the semicolon and insert a colon; add the following:
Provided. That the Commissioner may register as concurrent registrations the same or similar marks to more than one registrant when they have become entitled to use such marks as a result of their concurrent lawful use thereof in commerce prior to any of the filing dates of the applications involved and the Commissioner or a court on appeal determines that confusion or mistake or deceit of purchasers is not likely to result from the continued use of said marks under conditions and limitations as to the mode or place of use of the goods in connection with which such registrations may be granted which conditions and limitations shall be prescribed in the grant of the concurrent registrations thereof; and concurrent registrations may be similarly granted by the Commissioner with such conditions and limitations when a court has finally determined that more than one person is entitled to use the same or similar marks in commerce. The Commissioner shall give not less than thirty days' written notice to all applicants, registrants, and users specified by any of the parties concerned of any application for concurrent registration and of the time and place of the hearings thereon. When the Commissioner decides to grant a concurrent registration the proposed registration shall be published in the Official Gazette of the Patent Office and the application shall be subject to opposition as hereinafter provided for other applications to register marks. Concurrent registrations may be ordered by a court in an action under the provisions of section 4915. Revised Statutes, under such conditions and limitations as the court considers proper in accordance herewith.
Page 3, line 24, after "descriptive" insert "or deceptively misdescriptive"; after "them," insert "or".
Page 4, line 1, after "descriptive" insert "or deceptively misdescriptive".

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Page 4, line 2, after "hereof," insert "or".
Page 4, line 6, strike out "any" and insert in lieu "a".
Page 4, line 7, strike out "as a trade--mark".
Page 4, line 8, strike out the sentence beginning with the word
"Substantially" and continuing to the end of line 11; insert in lieu thereof--
The Commissioner may accept as prima facie evidence that the mark has become distinctive, as applied to the applicant's goods in commerce, proof of substantially exclusive and continuous

use thereof as a mark by the applicant in commerce for the five years next preceding the date of the filing of the application for its registration.
Page 4, line 12, strike out "AND CERTIFICATION".
Page 4, line 13, strike out "same".
Page 4, line 14, strike out "may be" and insert in lieu "are".
Page 4, line 15, strike out "and certification".
Page 4, line 16, insert after "effect" and before the comma "as are trade--marks".
Page 4, line 18, strike out the period, insert a comma and add "except when used so as to represent falsely that the owner thereof makes or sells the goods on which such mark is used."
Page 4, line 19, strike out "and certification".
Page 4, line 21, strike out "may" and insert in lieu "shall".
Page 4, line 23, strike out "ASSOCIATION" and insert in lieu "CERTIFICATION".
Page 4, line 25, strike out "may be" and insert in lieu "are".
Page 5, line 1, after "collective" insert "and certification"; after "origin" strike out the comma.
Page 5, strike out lines 2 to 8 inclusive, and insert in lieu--
in commerce, shall be registrable under this Act, in the same manner and with the same effect as are trade--marks, by persons, and nations, States, municipalities and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided herein in the case of trade--marks, except when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trade--marks.
Page 5, line 10, strike out "the" both occurrences, and insert in lieu "a" both occurrences
Page 5, line 11, strike out "subsidiary or".
Page 5, line 12, strike out "or by the members of an association."
Page 5, line 13, strike out the remainder of the line after "shall"; strike out lines 14 to 18 inclusive, and insert in lieu--
inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public.
Page 5, line 20, strike out "may" and insert in lieu "shall".
Page 5, line 25, strike out "right" and insert "rights".
Page 6, line 2, after "applicant's" insert "or owner's"; after "goods" and before the period insert "or services".
Page 6, line 13, after "shall" insert:
reproduce the drawing of the mark, contain the statement of the applicant and state that the mark is registered on the principal register under this Act, the date

of the first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered, the number and date of the registration, the term thereof, strike out "State".
Page 6, line 14, strike out the period at the end of the sentence, insert a comma, and add "and any conditions and limitations that may be imposed in the grant of the registration".
Page 6, line 15, strike out "The" at the beginning of the sentence and insert in lieu "A".

Page 6, line 17, strike out "mark" and insert in lieu "registration, registrant's ownership of the mark,".
Page 6, line 18, strike out "same" and insert in lieu "mark"; after "commerce" and before the period insert "in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein".
Page 6, line 19, strike out "Certificates" and insert in lieu "A certificate"; strike out "marks" and insert in lieu "a mark".
Page 6, line 20, strike out "assignees" and insert in lieu "assignee".
Page 6, line 21, after "of" strike out "succession or".
Page 6, line 22, after "shall," insert "at the request of the owner and".
Page 6, line 23, after "showing" strike out "at the request of the owner or successor".
Page 6, line 24, after "and" strike out "upon".
Page 6, line 25, strike out "owner or successor" and insert in lieu "assignee".
Page 7, line 1, strike out "owner or successor" and insert in lieu "assignee".
Page 7, line 2, after "the" insert "unexpired part of the".
Page 7, line 3, strike out "The" and insert after "(d)" "At any time, upon application of the registrant and payment of the fee herein provided, the"; after "Commissioner" strike out "upon application of the registrant".
Page 7, line 4, strike out all after the word "registration" and lines 5, 6, 7, 8 and 9, excepting the word "the" at the end of the line and insert in lieu--
in the Patent Office to be surrendered, canceled, or for good cause to be amended, and he may permit any registered mark to be disclaimed in whole or in part: Provided. That the registration when so amended shall still contain registrable matter and the mark as amended shall still be registrable as a whole, and that such amendment or disclaimer does not involve such changes in the registration as to alter materially the character of the mark.
Page 7, line 9, capitalize "the" and begin a new sentence.
Page 7, line 11, strike out the comma after "registration" and insert a comma after "or" on line 12.
Page 7, line 12, insert a comma after "destroyed".
Page 7, line 16, after "registration," insert "when".
Page 7, line 23, after "Whenever a" insert "material".
Page 8, line 2, strike out "may" and insert in lieu "shall".
Page 8, line 3, at the end of the line after "thereof" insert "shall be".
Page 8, line 4, strike out the comma after "registration" and insert "certificate".

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Page 8, line 5, before "certificate" insert "corrected"; after "thereafter" strike out the remainder of the sentence down to the word "form" on line 9 and insert in lieu--
have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge.
Page 8, line 9, strike out "such".
Page 8, line 10, after "certificates" insert "of correction".
Page 8, line 16, strike out "certificate".
Page 8, line 19, after "correction" insert "or, in his discretion, a new certificate"; strike out the comma after "fee" and insert a colon; capitalize "provided".
Page 8, line 20, strike out all of this line and "such as to necessitate" on line 21 and insert in lieu "That the correction does not involve such changes in the registration as to require".

Page 8, line 23, after "SEC. 8." insert "(a)".
Page 8, line 26, after "canceled" insert "by the Commissioner"; strike out "five" and insert "six".
Page 9, line 1, strike out "three months" and insert in lieu "one year".
Page 9, line 2, strike out "five" and insert in lieu "six".
Page 9, line 3, after "affidavit" strike out "in such form as may be prescribed by the Commissioner stating" and insert in lieu "showing".
Page 9, line 4, strike out the period after "use"; strike out "If however," and insert in lieu "or showing that its".
Page 9, line 5, after "circumstances" insert "which excuse such nonuse"; after "and" insert "is"; after "not" insert "due".
Page 9, line 6, after "intention" strike out "not to use or"; strike out "such" and insert in lieu "the"; strike out "the affidavit" and the remainder of the sentence down to "nonuse" on line 8. Page 9, line 8, strike out "Forms" and insert in lieu "Special notice of the requirement"; strike out "affidavits" and insert in lieu "affidavit".
Page 9, line 9, after "registration." insert the following subsections:
(b) Any registration published under the provisions of subsection (c) of section as of this Act shall be canceled by the Commissioner at the end of six years after the date of such publication unless within one year next preceding the expiration of such six years the registrant shall file in the Patent Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.
(c) The Commissioner shall notify any registrant who files either of the above prescribed affidavits of his acceptance or refusal thereof and is a refusal, the reasons therefor.
Page 9, line 11, after "SEC. 9." strike out the remainder of the line and insert in lieu "Each".
Page 9, line 12, strike out "like".
Page 9, line 13, strike out "on" and insert "upon the filing of an application therefore accompanied by an affidavit by
the registrant stating that the mark is still in use in commerce and the".
Page 9, line 14, strike out "fees" and insert in lieu "fee"; insert a semicolon after "Act" and strike out "if the registered mark is still in use;".

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Page 9, line 18, before "may" insert "it".
Page 9, line 19, strike out "an" and insert in lieu "the"; strike out "as".
Page 9, line 20, strike out "If the" and insert in lieu "An"; strike out "is".
Page 9, line 21, after "United States" strike out the comma and the remainder of the sentence down to "Act." on line 25 and insert in lieu "shall be subject to and comply with the provisions of section 1 (d) hereof."
Page 10, line 3, before "has" insert "to register"; strike out "upon such terms and conditions as the parties may agree." and insert in lieu--
with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark, and in any such assignment it shall not be necessary to include the goodwill of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted: Provided. That any assigned registration may be canceled at any time if

the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used.
Page 10, line 7, strike out "the" first occurrence and insert in lieu "an".
Page 10, line 11, strike out "from" and insert in lieu "after".
Page 10, line 13, after "a" insert "separate"; after "of" insert "such"; after "assignments" and before the period insert "submitted to him for recording".
Page 10, line 14, strike out "If the" and insert in lieu "An"; strike out "is"; strike out the comma after "United States" and the remainder of the sentence down to "Act." on line 19 and insert in lieu "shall be subject to and comply with the provisions of section 1 (d) hereof."
Page 10, line 20, insert the heading above Sec. 11 "ACKNOWLEDGMENTS AND VERIFICATIONS"; strike out "Any acknowledgment or verification" and insert: Acknowledgments and verifications required hereunder may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country concerned whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, and.
Page 10, line 21, strike out "it complies" and insert in lieu "they comply".
Page 10, line 22, strike out "it is".
Page 10, line 24, after "SEC. 12." insert "(a)".
Page 10, line 25, strike out "fees" and insert in lieu "fee".
Page 11, line 1, before "shall" insert "shall refer the application to the examiner in charge of the registration of marks, who".
Page 11, line 4, strike out "at least once".
Page 11, after line 5, insert the following new subsections:
(b) If the applicant is found not entitled to registration, the examiner shall advise the applicant thereof and of the reasons therefor. The applicant shall have a period of six months in which to reply or amend his application, which shall then be re--examined. This procedure may be repeated until (1) the examiner finally refuses registration of the mark or (2) the applicant fails for a period of six months to reply or amend or appeal, whereupon the application

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shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unavoidable, whereupon such time may be extended.
(c) A registrant of a mark registered under the provisions of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Commissioner an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant claims the benefits of this Act for said mark. The Commissioner shall publish notice thereof with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of section 8 of this Act.
Page 11, line 7, after "who" insert "believes that he".
Page 11, line 8, after "mark" insert "upon the principal register".
Page 11, line 9, after "Patent Office" insert a comma.
Page 11, line 10, after "therefor" insert a comma.

Page 11, line 11, strike out "in the Official Gazette" and insert in lieu "under subsection (a) of section 12 of this Act".
Page 11, line 13, strike out the period after "Commissioner", insert a comma and add "who shall notify the applicant."
Page 11, line 19, strike out "Whenever any" and insert in lieu "Any"; strike out "is" and insert "who believes that he is or will be".
Page 11, line 20, after "mark" strike out the remainder of the sentence down to "thereof." on line 22 and insert in lieu--
on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905, may upon the payment of the prescribed fee apply to cancel said registration--
(a) within five years from the date of the registration of the mark under this Act; or
(b) within five years from the date of the publication under section 12(c) hereof a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or
(c) at any time if the.
Page 11, line 22, strike out "If a".
Page 11, line 24, strike out "section 2,".
Page 11, line 25, strike out "hereof," and the remainder of the sentence down to "Act." on page 12, line 3, and insert in
lieu--
of Section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark has been assigned and is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used, or if the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act.
Page 12, line 4, after "SEC. 15." strike out all of this section and insert in lieu--
Except on a ground for which application to cancel may be filed at any time under subsection (c) of section 14 of this Act, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of the publication under this Act of such registered mark, the right of the registrant to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable; provided--
(1) There has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and

(2) There is no proceeding involving said rights pending in the Patent Office or in a court and not finally disposed of; and
(3) That an affidavit is filed with the Commissioner within one year after the expiration of any such five--year period setting forth those goods or services stated in the registration on or in connection with which such mark has been in continuous use for such five consecutive years and is still in use in commerce, and the other matters specified in subsections (1) and (2) hereof.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this Act shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Commissioner within one year after the expiration of any period of five consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 12 of this Act.
The Commissioner shall notify any registrant who files the above--prescribed affidavit of the filing thereof.
Page 12, line 10, strike out "in the opinion of the Commissioner".
Page 12, line 13, after "goods" insert "or when used in connection with the services".
Page 12, line 14, strike out the comma after "applicant".
Page 12, line 17, after "and" insert "the registration of"; after "to" insert "the".
Page 12, line 19, after "SEC. 17," strike out all of the section and insert in lieu--
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 and decide the respective rights of registration.
Page 14, line 5, after "SEC. 18," strike out all of the section and insert in lieu--
In such proceedings the examiner may refuse to register the opposed mark, may cancel or restrict the registration of a registered mark, or may refuse to register any or all of several interfering marks, or may register the mark or marks for the person or persons entitled thereto, as the rights of the parties hereunder may be established in the proceedings: Provided, That in the case of the registration of any mark based on concurrent use, the examiner shall determine and fix the conditions and limitations provided for in subsection
(d) of section 2 of this Act.
Page 14, line 11, after "SEC. 19." strike out all of this paragraph down to and including line 16.
Page 14, line 17, strike out "(a)"; strike out "the doctrine" and insert in lieu "equitable principles"; insert a comma after "laches" and add "estoppel".
Page 14, line 18, strike out "shall" and insert in lieu "may".
Page 14, line 20, strike out "cases" and insert in lieu "proceedings".
Page 14, line 21, strike out the comma after "determined" and insert in lieu a period; strike out the remainder of the sentence.
Page 14, line 23, strike out "Appeal" and insert "An appeal".
Page 14, line 24, strike out "the" first occurrence, and insert in lieu "any"; after "examiner" insert "in charge".
Page 15, line 1, after "interferences" and before the period insert "or of the registration of marks upon the payment of the prescribed fees"; strike out all of the sentence beginning with the word "Appeals" and ending on line 3.
Page 15, line 4, strike out "If an" and insert in lieu "Any".

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Page 15, line 5, strike out "or a" at the beginning of the line; after "interference" insert "proceeding,"; strike out "as to a mark, or"; after "party" strike out "who has filed opposition to the registration of a mark," and insert in lieu "to an opposition proceeding,".
Page 15, line 6, strike out "or a".
Page 15, line 7, strike out "or".

Page 15, line 8, strike out "an application for the cancelation of the registration of a mark," and insert in lieu "a cancelation proceeding, or any registrant who has filed an affidavit as provided in section 8, who".
Page 15, line 10, strike out "of Patents, he".
Page 15, line 11, after "Patent Appeals" strike out the remainder of the section and insert in lieu--

or may proceed under section 4915, Revised Statutes, as in the case of applicants for patents, under the same conditions, rules, and procedure as are prescribed in the case of patent appeals or proceedings so far as they are applicable: Provided. That any party who is satisfied with the decision of the Commissioner shall, upon the filing of an appeal to the Court of Customs and Patent Appeals by any dissatisfied party, have the right to elect to have all further proceedings under Revised Statutes, 4915, by election as provided in Revised Statutes, 4911.
Page 15, line 22, strike out "under" and insert in lieu "on the principal register provided by"; strike out "and" and insert in lieu "or under".
Page 15, line 23, strike out "Acts" and insert in lieu "Act"; after "1881" strike out the comma and insert "or the Act of"; strike out "and March 19, 1920, is",
Page 15, line 24, before "notice" insert "shall be constructive".
Page 16, line 10, after "marks" insert "capable of distinguishing applicant's goods or services and".
Page 16, line 13, strike out "bona fide" and insert in lieu "lawful"; strike out "for not less than one year".
Page 16, line 15, strike out "of such proprietor," and insert in lieu "or services for the year proceding the filing of the application".
Page 16, line 16, strike out "filing" and insert in lieu "prescribed".
Page 16, line 17, strike out "to the Commissioner of Patents"; strike out "such formalities as the said Commissioner may require:" and insert in lieu "the provisions of section 1 so far as they are applicable."
Page 16, line 18, strike out "Provided"; strike out lines 19 to 25 inclusive and lines 1 to 6 inclusive on page 17; insert in lieu thereof the following paragraph:
Upon the filing of an application for registration on the supplemental register and payment of the fee herein provided the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of subsection (b) of section 12 of this Act shall apply.
Page 17, line 7, strike out "this register" and insert in lieu "registration on the supplemental register"; strike out "include a" and insert in lieu "consist of any".
Page 17, line 9, strike out "or"; insert after "phrase," "surname, geographical name, numeral, or device or any combination of any of the foregoing.".

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Page 17, line 10, after "goods" and before the period insert "or services".
Page 17, strike out lines 11 to 15 inclusive and line 16 down to and including the word "That"; strike out "upon" and insert in lieu "Upon".
Page 17, line 18, strike out "bona fide" and insert in lieu "lawful".
Page 17, strike out all of lines 22 to 25, inclusive.

Page 18, line 4, after "registration" and before the period insert "in the Official Gazette of the Patent Office"; strike out "shall deem himself injured by the inclusion" and insert in lieu "believes that he is or will be damaged by a registration".
Page 18, line 6, after "Commissioner" strike out "of Patents".
Page 18, line 9, after "interferences," strike out "who is empowered to hear and determine this question, and".
Page 18, line 11, strike out "appear" and insert in lieu "is found".
Page 18, line 12, strike out "date" and insert in lieu "time".
Page 18, line 14, after "abandoned," strike out the remainder of the sentence down to "registration." on line 16 and insert in lieu "the registration shall be canceled by the Commissioner."
Page 18, line 16, strike out the sentence beginning with the word "Appeal" down to "appealable." on line 19.
Page 18, line 20, strike out "DURATION AND RENEWAL".
Page 18, line 21, after "SEC. 25." strike out all of this section down to and including line 9 on page 19 and insert in lieu--
The certificates of registration for marks registered on the supplemental register shall be conspicuously different from certificates issued for marks registered on the principal register.
Page 19, line 11, after "provisions of" strike out the remainder of the line and lines 12, 13 and 14; insert in lieu thereof--
this Act shall govern so far as applicable applications for registration and registrations on the supplemental register as well as those on the principal register, but applications for and registrations on the supplemental register shall not be subject to or receive the advantages of sections 2(e), 2 (f), 7 (b), 12(a), 13 to 18, inclusive, 22, 33, and 42 of this Act.
Page 19, line 15, after "Registration" insert "of a mark".
Page 19, line 16, strike out "or expiration under section 25 hereof,".
Page 19, line 17, after "by" insert "the".
Page 19, strike out all of lines 22 to 25, inclusive.
Page 20, line 2, after "SEC 29." strike out the remainder of line 2, all of lines 3 to 7 inclusive, and line 8 down to and
including "TMR"; insert in lieu thereof--
Notwithstanding the provisions of section 22 hereof, a registrant of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register established by this Act, shall give notice that his mark is registered by displaying with the mark as used the words "Registered in U.S. Patent Office" or "Reg. U.S. Pat. Off." or the letter R enclosed within a circle, thus(R).
Page 20, line 9, after "by" insert "such"; strike out the comma after "mark" and insert "goods bearing the registered mark, or by a registrant under the Act of March 19, 1920, or by the registrant of a mark on the supplemental register provided by this Act".
Page 20, line 10, after "recovered" insert "under the provisions of this Act".

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Page 20, line 11, after "notice" and before the colon insert "of the registration".
Page 20, line 12, after "respect to" insert "a registered mark used in connection with"; after "goods" insert "or services".

Page 20, line 13, after "the" strike out the remainder of the line, strike out lines 14, 15 and 16; insert in lieu thereof--
mark as used is accompanied by the notice of registration used in the country of origin of the goods or services to denote registration there.
Page 20, line 18, strike out "may" and insert in lieu "shall".
Page 20, line 19, strike out "merchandise, services, and so forth," and insert in lieu "goods and services,".
Page 20, line 22, after "goods" insert "or services".
Page 20, line 23, after "upon" insert "or in connection with"; strike out "has" and insert in lieu "is"; strike out "used" and insert in lieu "using".
Page 21, line 4, strike out "Fees payable to the Patent Office under this Act shall be as follows:" and insert in lieu "The following fees shall be paid to the Patent Office under this Act:"; then begin a new paragraph.
Page 21, line 6, after "mark" insert "in each class".
Page 21, line 8, after "renewal" and before the comma insert "in each class"; after "renewal" second occurrence insert "in each class".
Page 21, line 9, after "S5;" insert "on filing notice of claim of benefits of this Act for a mark to be published under section 12 (c) hereof, S5;".
Page 21, line 11, strike out "the" and insert in lieu "an"; after "charge" insert "of the registration"; after "of" strike out "trade--".
Page 21, line 12, strike out "the" and insert in lieu "an".
Page 21, line 15, after "mark" and before the comma insert "or correction of a registrant's mistake".
Page 21, line 16, after "filing" insert "in each class".
Page 21, line 18, after "application" insert "in each class".
Page 22, line 3, strike out the comma after "additional".
Page 22, line 4, after "disclaimer" insert a comma and add "amendment, surrender, or cancelation".
Page 22, lines 15 and 17, strike out the comma each occurrence after the word "additional". Page 22, line 18, strike out "copy" and insert in lieu "page".
Page 22, line 19, strike out the comma after "additional".
Page 22, line 21, after "assignment," strike out "power of attorney,".
Page 22, line 24, strike out "is authorized to" and insert in lieu "shall".
Page 23, line 2, after "SEC. 32." insert "(1)"; after "commerce," insert "(a) use,".
Page 23, line 3, after "registrant," strike out the remainder of the line, all of lines 4, 5 and 6, and line 7 down to and including the word "thereof"; insert in lieu--
any reproduction, counterfeit, copy, or colorable imitation of any registered mark in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use.

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Page 23, line 8, strike out the comma after "purchasers" and the remainder of the line; strike out all of lines 9 to 17 inclusive and insert in lieu--
as to the source or origin of such goods or services; or (b) reproduce, counterfeit, copy, or colorably imitate any such mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to

be used upon or in connection with the sale in commerce of such goods or services, shall be liable to a civil action by the registrant for any or all of the remedies hereinafter provided, except that under subsection (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive purchasers.
(2) Notwithstanding any other provision of this Act, the remedies given to the owner of the right infringed shall be limited as follows: (a) Where an infringer is engaged solely in the business of printing the mark for others and establishes that he was an innocent infringer the owner of the right infringed shall be entitled as
against such infringer only to an injunction against future printing. (b) Where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar periodical shall be confined to an injunction against the future public presentation of such advertising matter: Provided. That these limitations shall apply only to innocent infringers. (c)Injunction relief shall not be available to the owner of the right infringed in respect of an issue of a newspaper, magazine, or other similar periodical containing infringing matter after the commencement or preparation of the engraving or composition work for the issue containing such infringing matter.
(3) If goods bearing a registered mark have been put on the market by or with the authority of the registrant of a registered mark or in any package or other container bearing said mark and a notice that the goods may be resold only unaltered or in the original package or container and said goods or any part thereof have, without the authority of the registrant, been transferred to another package or container or been in anyway altered, any person who shall, in commerce, make any use of or reference to said registered mark upon or in connection with the sale or advertising of such transferred or altered goods shall be liable to a civil action by the registrant for any or all of the remedies hereinafter provided.

Page 23, strike out all of lines 18 to 25 inclusive.
Page 24, strike out the entire page.
Page 25, strike out all of lines 1 to 6 inclusive; insert the following new section 33:
SEC. 33. (a) Any certificate of registration issued under the Act of March 3, 1881, or the Act of February 20,1905, or of a mark registered on the principal register provided by this Act and owned by the plaintiff shall be admissible in evidence and shall be prima facie evidence of registrant's exclusive right to use the registered mark in commerce on the goods or services specified in the certificate subject to any conditions or limitations stated therein, but shall not preclude the defendant from proving any legal or equitable defense which would have been available to him if the plaintiff's mark had not been registered.
(b) If the right to use the registered mark has become incontestable under section 15 hereof, the certificate shall be conclusive evidence of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate subject to any conditions or limitations stated therein except when one of the following defenses is established:
(1) That the registration or the incontestable right to use the mark was obtained fraudulently; or
(2) That the mark has been abandoned by the registrant; or

(3) That the registered mark has been assigned and is being used, by or with the permission of the assignee, so as to misrepresent the source of the goods or services in connection with which the mark is used; or
(4) That the use by the defendant of the name, term, or device charged to be an infringement is a use, otherwise than as a trade or service mark, of the defendant's individual name in his own business, or of the individual name of anyone

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in privity with the defendant, or of a term or device which is descriptive of and used fairly and in good faith only to describe to users the goods or services of the defendant or their geographic origin; or
(5) That the mark whose use by the defendant is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by the defendant or those in privity with him from a date prior to the publication of the registered mark under subsection (a) or (c) of section 12 of this Act: Provided, however, That this defense shall apply only for the area in which such continuous prior use is proved.

Page 25, line 7, strike out "33" and insert in lieu "34".
Page 25, line 12, strike out "under this Act" and insert in lieu "in the Patent Office". Then insert the following:
Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction.
Page 25, line 14, strike out "or by a judge thereof,".
Page 25, line 19, after "other" insert "United States"; strike out the comma after "court".
Page 25, strike out lines 20, 21 and "a judge thereof." on line 22; insert in lieu thereof "in whose jurisdiction the defendant may be found."; then begin a new paragraph.
Page 25, line 22, strike out ", or judges thereof,".
Page 26, line 5, strike out "And it" and insert in lieu "It"; begin a new paragraph.
Page 26, line 9, strike out "of Patents,".
Page 26, line 15, strike out "cross--bill,".
Page 26, line 16, strike out "of Patents".
Page 26, line 17, insert a comma after "rendered" and add "appeal taken".
Page 26, line 18, strike out "of Patents".
Page 26, line 19, strike out "of Patents".
Page 26, line 23, after "said file" strike out "or file"; after "required" strike out "to be" and insert in lieu "and".
Page 26, line 24, strike out "of Patents".
Page 27, line 1, strike out "therewith" and insert in lieu "herewith".
Page 27, line 3, strike out "34" and insert in lieu "35".
Page 27, line 7, after "(3)" strike out "in the discretion of the court".
Page 27, line 11, insert a comma after "sales".
Page 27, line 13, after "may" strike out", according to the circumstances of the case,".
Page 27, line 14, after "judgment" insert a comma and add "according to the circumstances of the case,".

Page 27, line 15, strike out the comma after "damages".
Page 27, line 16, change the comma after "amount" to a period and strike out "such sum to constitute compensation and not a penalty."; add the following sentences:
If the Court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty.
Page 27, line 18, strike out "35" and insert in lieu "36".
Page 27, line 21, strike out "or" and insert in lieu "and".

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Page 28, line 1, strike out "or" and insert in lieu "and".
Page 28, line 3, strike out "36" and insert in lieu "37"; after "action" insert "involving a registered mark".
Page 28, line 6, after "register" and before the period insert "with respect to the registrations of any party to the action".
Page 28, line 10, strike out "37" and insert in lieu "38"; after "registration" insert "in the Patent Office".
Page 28, line 11, strike out "in the office of the Commissioner of Patents".
Page 28, line 16, strike out "38" and insert in lieu "39".
Page 28, line 17, strike out "and the District Court of the United States for the District of Columbia".
Page 28, line 18, strike out "and".
Page 28, line 20, strike out "for" and insert in lieu "of".
Page 28, line 21, strike out "civil".
Page 28, line 22, after "Act" strike out "respecting trade--marks registered in accordance with the provisions of this Act".
Page 29, line 1, strike out "39" and insert in lieu "40".
Page 29, line 5, strike out "40" and insert in lieu "41"; strike out "of Patents is authorized to" and insert in lieu "shall".
Page 29, strike out all of lines 8 to 19 inclusive.
Page 29, line 23, strike out "merchandise" and insert in lieu "goods"; strike out "its" and insert in lieu "their".
Page 29, line 24, after "any" strike out "registered mark or"; strike out line 25, lines 1 and 2 of page 30 down to and including "Act,"; insert in lieu thereof--
mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register provided by this Act, or any infringement of a mark so registered.
Page 30, line 9, after "such" strike out "merchandise shall be amenable" and insert in lieu "goods shall be subject".
Page 30, line 12, strike out "merchandise" and insert in lieu "goods".
Page 30, line 13, strike out "merchandise" and insert in lieu "goods".
Page 30, line 17, strike out "or owner"; after "of the" strike out "trade"; after "shall" strike out "record the trade--mark" and insert in lieu "deposit".
Page 30, line 18, after "Treasury" and before the comma insert "a facsimile of the registration certificate".

Page 30, line 20, strike out "merchandise" and insert in lieu "goods"; strike out "its" and insert in lieu "their".
Page 30, line 21, after "bear the" insert "trade or commercial".
Page 30, line 22, strike out "manufacture or".
Page 31, line 7, after "person" strike out "selling, offering for sale, or dealing in such merchandise".
Page 31, line 8, after "from" strike out "dealing therein" and insert in lieu "selling, offering for sale, dealing in, or advertising such goods".
Page 31, line 9, strike out "merchandise" and insert in lieu "goods".
Page 31, line 10, strike out "merchandise" and insert in lieu "goods".
Page 31, line 14, after "shall" strike out "record his trade or commercial name" and insert in lieu "deposit".
Page 31, line 15, after "Treasury" and before the comma insert "a facsimile of his trade or commercial name".
Page 31, line 16, strike out "may" and insert in lieu "shall".

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Page 31, line 18, strike out "merchandise" and insert in lieu "goods".
Page 31, line 19, strike out "paragraphs" and insert in lieu "paragraph".
Page 31, line 22, strike out "merchandise is" and insert in lieu "goods are".
Page 31, line 25, strike out "such".
Page 32, line 1, before "has been filed," insert "of a representative".
Page 32, line 4, strike out "merchandise" and insert in lieu "goods":
Page 32, line 5, strike out "names or marks which it bears" and insert in lieu "trade or commercial name or mark which they bear".
Page 32, line 8, strike out "merchandise is" and insert in lieu "goods are".
Page 32, line 9, strike out "merchandise" and insert in lieu "goods".
Page 32, line 15, strike out "DESIGNATION" and insert in lieu "DESIGNATIONS".
Page 32, line 18, strike out "article or articles of merchandise" and insert in lieu "goods or services".
Page 32, line 19, strike out "of the same" and insert in lieu "for goods".
Page 32, line 22, strike out "merchandise" and insert in lieu "goods or services".
Page 32, strike out all of lines 24 and 25, and "to be transported," on line 1 of page 33; insert in lieu thereof--
with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used,
Page 33, line 1, strike out "at the suit of" and insert in Eeu "by".
Page 33, line 4, strike out the remainder of the sentence beginning with the words "or of any association" and insert in lieu--
or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.
Page 33, line 8, strike out "article" and insert in lieu "goods".
Page 33, line 11, strike out "merchandise" and insert in lieu "goods".
Page 33, line 12, strike out "in" and insert in lieu "at".
Page 33, line 15, strike out "merchandise" and insert in lieu "goods".

Page 33, line 21, strike out "commercial and trade names" and insert in lieu "trade and commercial names".
Page 34, line 2, after "mark or" insert "trade or commercial"; after "name" second occurrence insert a comma; strike out "and residence" and insert in lieu "citizenship, and address".
Page 34, line 4, strike out "date" and insert in lieu "dates".
Page 34, line 5, after "was filed" insert "and granted".
Page 34, line 6, after "goods" insert "or services".
Page 34, line 11, after "Persons" insert "who are"; strike out "or" first occurrence, strike out "having" and insert in lieu "have".
Page 34, line 13, after "any" insert "foreign"; after "is" insert "a"; after "to" insert "(1)".
Page 34, line 14, strike out "concluded" and insert in lieu "signed".
Page 34, line 15, change the comma after "1883" to a semicolon; after "or" insert "(2)"; strike out "to any subsequent revision", strike out lines 16, 17, 18, 19 and line 20 to and including "1931"; insert in lieu thereof--
the General Inter--American Convention for trade--mark and Commercial Protection signed at Washington on February 20, 1929; or (3) any other convention or

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treaty relating to trade--marks, trade or commercial names, or the repression of unfair competition to which the United States is a party.
Page 34, line 21, after "Act" insert--
to the extent and under the conditions essential to give effect to any such conventions and treaties so long as the United States shall continue to be a party thereto,
Page 35, line 1, strike out "except".
Page 35, line 2, strike out "no such" and insert in lieu "the same".
Page 35, line 3, strike out "or" and insert in lieu "unless".
Page 35, line 10, strike out "section 1 or 23" and insert in lieu "sections 1, 2, 3, 4, or 23".
Page 35, strike out line 24.
Page 36, strike out lines 1 and 2.
Page 36, line 3, strike out "(4)" and insert in lieu "(3)".
Page 36, line 4, strike out "day" and insert in lieu "date"; after "of the" insert "filing of the". Page 36, line 5, strike out "the" and insert in lieu "a".
Page 36, line 6, strike out "the" and insert in lieu "an"; strike out "under this paragraph; and" and insert in lieu "filed under this subsection (d);".
Page 36, line 7, strike out "(5)" and insert in lieu "(4)"; strike out "paragraph" and insert in lieu "subsection (d)".
Page 36, line 15, after "application" insert "therefor".
Page 36, line 16, after "copy of the" insert "application for or".
Page 36, line 21, after "duration" insert a comma.
Page 36, line 24, after "Trade names" insert "or commercial names".
Page 37, line 1, strike out "used in commerce"; strike out "in accordance with the provisions of this Act" and insert in
lieu "without the obligation of filing or registration whether or not they form parts of marks".
Page 37, line 6, strike out "business"; strike out "and in repressing acts of unfair competition"; then insert "and".

Page 37, line 9, after "appropriate" and before the period insert "in repressing acts of unfair competition".
Page 37, after line 19, insert the following paragraph:
The term "principal register" refers to the register provided for by sections 1 to 22 hereof, and the term "supplemental register" refers to the register provided for by sections 23 to 28 hereof.
Page 37, line 24, after "corporation," insert "union,".
Page 38, line 1, strike out "similar" and insert in lieu "other".
Page 38, line 8, after "any" strike out the remainder of the paragraph down to and including "registrant." on line 12; insert in lieu thereof--
person who is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used.
Page 38, strike out lines 13 to 24 inclusive and insert in lieu:
The terms "trade name" and "commercial name" include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing; industrial, commercial agricultural, or other organizations engaged in trade or commerce and capable of suing and being sued in a court of law.

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The term "trade--mark" includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others.
The term "service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce.
The term "collective mark" or "certification mark" means a mark used to distinguish the products or services of two or more persons to certify or indicate regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or to indicate a membership in an association or other organization or that the work or labor on the goods or services was performed by members of a union or other organization.
The term "mark" includes any trade--mark, service mark, collective mark or certification mark entitled to registration under this Act whether registered or not.
Page 39, line 2, after "be" strike out the remainder of the line, and all of lines 3, 4 and 5; insert in lieu thereof--
used in commerce (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and the goods are sold or transported in commerce and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce.
Page 39, line 9, after "two" insert "consecutive".
Page 39, line 11, after "When any" insert "course of"; after "registrant" insert a comma and "including acts of omission as well as commission,".
Page 39, line 14, strike out "mark registered under this Act" and insert in lieu "registered mark".
Page 39, after line 15, insert the following paragraphs:

The term "registered mark" means a mark registered in the United States Patent Office under this Act or under the Act of March 3, 1881, or the Act of February 20, 1905, or the Act of March 19, 1920. The phrase "marks registered in the Patent Office" means registered marks.
The term "Act of March 3, 1881", "Act of February 20, 1905", or "Act of March 19, 1920", means the respective Act as amended.
Page 39, line 16, after "is a" insert "spurious".
Page 39, line 24, insert a comma after "State" and add "or Territorial".
Page 40, line 5, insert a comma after "trade--marks" and add "trade names,".
Page 40, line 9, after "SEC. 46." insert "(a)"; strike out "sixty days" and insert in lieu "one year".
Page 40, line 13, after "repealed" and before the comma insert "effective one year from the enactment hereof".
Page 40, line 14, strike out ", namely" and insert in lieu "Acts in so far as they are inconsistent herewith".
Page 41, line 2, strike out "March 3, 1911 (36 Stat. 1167),".
Page 41, line 15, strike out "except" and insert in lieu "provided".
Page 41, strike out lines 17 and 18, and insert in lieu--
granted or applied for under any of said Acts prior to the effective date of this Act, or rights or remedies thereunder except as provided in sections 8, 12, 14, 15 and 47 of this Act.
Page 41, line 19, before "Registrations" insert "(b)"; after "under the" insert "Act of March 3, 1881, or the".

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Page 41, line 21, strike out "term" and insert in lieu "terms".
Page 41, line 22, after "registrations" insert "and the renewals thereof".
Page 41, line 23, strike out "benefit" and insert in lieu "benefits".
Page 41, line 24, strike out "relating to marks registered on the principal register established by this Act," and insert in lieu--
to the same extent and with the same force and effect as though registered on the principal register established by this Act except as limited in sections 8, 12, 14, and 15 of this Act. Page 42, line 6, strike out "trade".
Page 42, line 8, after "expire" strike out--
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. and insert in lieu-- six months after the effective date of this Act, or twenty years from the dates of their registrations, whichever date is later.
Page 42, line 12, strike out "benefit" and insert in lieu "benefits".
Page 42, line 14, strike out the period after "Act", insert a comma and add--
and may not be renewed unless renewal is required to support foreign registrations. In that event renewal may be effected on the supplemental register under the provisions of section 9 of this Act.
Page 42, after line 16, insert the following section 47:
SEC 47. (a) All applications for registration pending in the Office of the Commissioner at the effective date of this Act may be amended, if practicable, to bring them under the provisions of this Act. The prosecution of such applications so amended and the grant of registrations thereon shall be proceeded with in accordance with the provisions of this Act. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon

granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued in force to this extent and for this purpose only, notwithstanding the foregoing general repeal thereof.
(b) In any case in which an appeal is pending before the United States Court of Customs and Patent Appeals or any United States Circuit Court of Appeals or the United States Court of Appeals of the District of Columbia or the United States Supreme Court at the effective date of this Act, the court, if it be of the opinion that the provisions of this Act are applicable to the subject matter of the appeal, may apply such provision or may remand the case to the Commissioner or to the District court for the taking of additional evidence or a new trial or for reconsideration of the decision on the record as made, as the appellate court may deem proper.
Page 42, line 17, strike out "47" and insert in lieu "48".
Page 42, after line 25, insert the following section 49:
SEC 49. Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith prior to the passage of this Act.
Page 43, line 1, strike out "48" and insert in lieu "50".

THE STATUTES

The Federal Trade--Mark Act has been in operation for over 37 years. It has been frequently amended, and these amendments are well scattered throughout the United States statutes. There are confusing and conflicting interpretations of these various statutes by the

courts. There is much that is good in the present acts. Their results, on the whole, have been beneficial. The present bill preserves the things which have demonstrated their usefulness. The purpose of this bill is to place all matters relating to trade--marks in one statute and to eliminate judicial obscurity, to simplify registration and to make it stronger and more liberal, to dispense with mere technical prohibitions and arbitrary provisions, to make procedure simple and inexpensive, and relief against infringement prompt and effective. This bill effects this necessary codification and coordination.

HEMISPHERE SOLIDARITY

Although it has solemnly pledged at inter--American conventions to do so, the United States has failed adequately to protect owners of trade--marks in the other American countries doing business with this country. As a result of this inaction, our business organizations have not received reciprocal advantages in the other Americas. The bill remedies this matter, eliminates these sources of friction with our Latin--American friends, and will facilitate mutual trade in this hemisphere. These features make this bill of primary importance now.

BASIC PURPOSES OF TRADE--MARK LEGISLATION

The purpose underlying any trade--mark statute is twofold. One is to protect the public so it may be confident that, in purchasing a product bearing a particular trade--mark which it favorably knows, it will get the product which it asks for and wants to get. Secondly, where the owner of a trade--mark has spent energy, time, and money in presenting to the public the product, he is protected in his investment from its misappropriation by pirates and cheats. This is the well--established rule of law protecting both the public and the trade--mark owner. It is succinctly

stated by Mr. Justice Frankfurter in Mishawaka Rubber and Woolen Company v. S.S. Kresge Company, decided on May 4, 1942:
The protection of trade--marks is the law's recognition of the psychological function of symbols. Your committee believes the proposed bill accomplishes these two broad basic principles.

REVISION OF THE BILL

In prior revisions of the bill there had been objections to the incontestability clause whereby a registered trade--mark could not be attacked after the passage of a certain period of time except, of course, for fraud. Your committee held hearings on November 4, 12, 13, and 14, 1941. Your committee has been assisted by many business organizations and groups of lawyers familiar with this field. As a result of their combined efforts the incontestability clause has been rewritten to make certain that protection is given to all honest concurrent users.
Other provisions of the bill have been revised in the interest of clarification. Your committee believes that adequate provision has been made to protect newspapers and other publications who have published infringing trade--marks without notice of such infringements.

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TRADE--MARKS DEFEAT MONOPOLY BY STIMULATING COMPETITION

This bill, as any other proper legislation on trade--marks, has as its object the protection of trade--marks, securing to the owner the good--will of his business and protecting the public against spurious and falsely marked goods. The matter has been approached with the view of protecting trade--marks and making infringement and piracy unprofitable. This can be done without any misgivings and without the fear of fostering hateful monopolies, for no monopoly is involved in trade--mark protection.
Trade--marks are not monopolistic grants like patents and copyrights (Trade--mark cases, 100 U. S. 82). In Prestonettes v. Coty 264 U. S. 359), Mr. Justice Holmes said (368):
It [a trade--mark] does not confer a right to prohibit the use of the word or words. It is not a copyright. * * *
A trade--mark only gives the right to prohibit the use of it so far as to protect the owner's goodwill against the sale of another's product as his.
In United Drug Co. v. Rectanus (248 U. S. 90, 97--98), Mr. Justice Pitney said:
The owner of a trade--mark may not, like the proprietor of a patented invention make a negative and merely prohibitive use of it as a monopoly.
*****
In truth, a trade--mark confers no monopoly whatever in a proper sense * * *.
There is no essential difference between trade--mark infringement and what is loosely called unfair competition. Unfair competition is the genus of which trade--mark infringement is one of the species; "the law of trade--marks is but a part of the broader law of unfair competition" (United Drug Co. v. Rectanus 248 U. S. 90, 97). All trade--mark cases are cases of unfair competition and involve the same legal wrong. As Mr. Justice Pitney observed in Hanover Star Milling Co. v. Metcalf, 240 U.S. 403, 412:
The essence of the wrong consists in the sale of the goods of one manufacturer or vendor for those of another. *** This essential element is the same in trade--mark cases as in cases of unfair competition unaccompanied with trade--mark infringement. The protection accorded trade--

marks is merely protection against swindling. As Mr. Justice Holmes observed in Dupont v. Masland, 244 U. S. 100, 102:

The word "property" as applied to trade--marks * * * is an unanalyzed expression of certain secondary consequences of the primary fact that the law makes some rudimentary requirements of good faith.

Trade--marks, indeed, are the essence of competition, because they make possible a choice between competing articles by enabling the buyer to distinguish one from the other. Trade--marks encourage the maintenance of quality by securing to the producer the benefit of the good reputation which excellence creates. To protect trade--marks, therefore, is to protect the public from deceit, to foster fair competition, and to secure to the business community the advantages of reputation and goodwill by preventing their diversion from those who have created them to those who have not. This is the end to which this bill is directed.

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SUMMARY

There are many reasons why there should be a new trade--mark statute. The present act is substantially the act of February 20, 1905. It has been amended from time to time and supplemented by the act of March 19, 1920, which has also been amended in several particulars. The result is a confused situation.

There are many statutes dealing with trade--marks which are widely scattered and difficult of access. There are provisions dealing with trade--marks in tariff acts and other unlikely places. It seems desirable to collect these various statutes and have them in a single enactment.

Moreover, ideas concerning trade--mark protection have changed in the last 30 years and the statutes have not kept pace with the commercial development. In addition the United States has become a party to a number of international conventions dealing with trade--marks, commercial names, and the repression of unfair competition. These conventions have been ratified, but it is a question whether they are self--executing, and whether they do not need to be implemented by appropriate legislation.

Industrialists in this country have been seriously handicapped in securing protection in foreign countries due to our failure to carry out, by statute, our international obligations. There has been no serious attempt fully to secure to nationals of countries signatory to the conventions their trade--mark rights in this country and to protect them against the wrongs for which protection has been guaranteed by the conventions. Naturally under such circumstances foreign governments do not always give to citizens of the United States their convention rights. To remedy this discreditable situation is merely an act of international good faith.

This bill attempts to accomplish these various things:

1. To put all existing trade--mark statutes in a single piece of legislation.
2. To carry out by statute our international commitments to the end that American traders in foreign countries may secure the protection to their marks to which they are entitled.
3. To modernize the trade--mark statutes so that they will conform to legitimate present--day business practice.

To remedy constructions of the present acts which have in several instances obscured and perverted their original purpose. These constructions have become so ingrained that the only way to change them is by legislation.

Generally to simplify trade--mark practice, to secure trade--mark owners in the goodwill which they have built up and to protect the public from imposition by the use of counterfeit and imitated marks and false trade descriptions.

The theory once prevailed that protection of trade--marks was entirely a State matter and that the right to a mark was a common--law right. This theory was the basis of previous national trade--mark statutes. Many years ago the Supreme Court held and has recently repeated that there is no Federal common law. It is obvious that the States can change the common law with respect to trade--marks and many of them have, with the possible result that there may be as

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many different varieties of common law as there are States. A man's rights in his trade--mark in one State may differ widely from the rights which he enjoys in another.
However, trade is no longer local, but is national. Marks used in interstate commerce are properly the subject of Federal regulation. It would seem as if national legislation along national lines securing to the owners of trade--marks in interstate commerce definite rights should be enacted and should be enacted now.
There can be no doubt under the recent decisions of the Supreme Court of the constitutionality of a national act giving substantive as distinguished from merely procedural rights in trade--marks in commerce over which Congress has plenary power, and when it is considered that the protection of trade--marks is merely protection to goodwill, to prevent diversion of trade through misrepresentation, and the protection of the public against deception, a sound public policy requires that trade--marks should receive nationally the greatest protection that can be given them.
Mr. Justice Holmes said in Bourjois & Co. v. Katzel (260 U. S. 689), in speaking of the protection accorded to a trade--mark (692):
It deals with a delicate matter that may be of great value but that easily is destroyed, and therefore should be protected with corresponding care.
Of a trade--mark he said:
It stakes the reputation of the plaintiff upon the character of the goods.

CHANGES IN EXISTING LAW
In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, certain provisions of law which are proposed to be repealed by the bill, insofar as such provisions are inconsistent with the bill, are set forth below: [OMITTED]

77th Congress, 1st Session

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1941

Mr. LANHAM introduced the following bill; which was referred to the Committee on Patents

A BILL

To provide for the registration and protection of trade--marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.

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