§ S. 2540

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That paragraph (1) of subsection (a) of section 1 of the Act entitled "An Act to provide for the registration and protection of trade--marks used in commerce, to carry out the provisions of international conventions, and for other purposes", approved July 5, 1946 (60 Stat. 427), is amended by striking the works "as might be calculated to deceive" and inserting in lieu thereof "which when applied

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to the same or similar goods is likely to deceive, or to cause confusion, or to cause mistake": and by striking the words "or services" from the proviso thereof; and by adding after the semicolon at the end of said paragraph the following: "And provided further, That in the case of every application for the registration of a mark wherein the claim of ownership and the right to registration are based upon use by a related company under section 5 hereof, the applicant shall acknowledge such use and shall indicate the nature of the relationship:".

SEC. 2. Subsection (d) of section 2 is amended by striking the language beginning with the word "purchasers", first appearance, and ending with the word "herewith" at the end of said subsection and inserting in lieu thereof the following: ":Provided, That when the Commissioner determines that confusion, mistake or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be granted to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending under this

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Act; or (ii) the application filing date of a registration granted under this Act; or (iii) July 5, 1947 in the case of registrations previously granted under the Act of March 3, 1881 or February 20, 1905 and continuing in full force and effect on that date; or (iv) July 5, 1947 in the case of applications under the Act of February20, 1905 pending on July 5, 1947. Concurrent registrations may also be granted by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In the grant of concurrent registrations, the Commissioner shall prescribe conditions and limitations of the grant as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons."

SEC 3. Section 6 is amended by striking the entire section and inserting in lieu thereof the following:
"(a) The Commissioner shall require the applicant to disclaim unregistrable matter. The applicant may voluntarily disclaim parts of marks sought to be registered.
"(b) No disclaimer heretofore or hereafter made, or made under paragraph (d) of section 7 of this Act, shall prejudice or affect the disclaimant's rights then existing or thereafter arising in the disclaimed matter, or the disclaim--

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ant's rights of registration on another application if the disclaimed matter be or shall have become distinctive of the disclaimant's goods or services."

SEC. 4. Subsection (a) of section 7 is amended by striking therefrom the word "either": by striking the words "name printed" and inserting in lieu thereof the words "signature placed": by striking the words "assistant commissioner or by one of law examiners duly" and inserting in lieu thereof the words "officer of the patent Office": and by striking the words "and a record thereof, together with printed copies of the drawing and statement of the applicant, shall be kept in books for that purpose" and inserting lieu thereof the words "and shall be recorded in the Patent Office".

SEC. 5. Subsection (d) of section 7 is amended by striking entire subsection and inserting in lieu thereof the following: "Upon application of the registrant the Commissioner may permit any registration to be surrendered for cancellation, and upon cancellation the Commissioner shall make appropriate entry upon the records of the Patent Office. Upon application of the registrant and for good cause and payment of the prescribed fee, the Commissioner may permit any registration to be amended or to be disclaimed in part: Provided. That the amendment or disclaimer does not

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alter materially the character of the mark and does not involve such changes in the registration as to require republication of the mark. 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."

SEC. 6. Subsection (a) of section 8 is amended by striking the word "showing", first appearance, and inserting in lieu thereof the word "stating".
Subsection (b) of section 8 is amended by striking the word "showing", first appearance, and inserting in lieu thereof the word "stating".

SEC. 7. Section 9 is amended by striking the entire section and inserting in lieu thereof the following:
"(a) Each registration may be renewed for periods of twenty years from the end of the expiring period upon the filing of an application therefor accompanied by an affidavit by the registrant stating that the mark is still in use in commerce or showing that its nonuse in commerce is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark and the payment of the renewal fee required by this Act; and such application may be made at any time within six months before the expiration
of the period for which the certificate

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of registration was issued or renewed or it may be made within three months after such expiration on payment of the additional fee herein provided.
"(b) The Commissioner shall notify any registrant who files the above--prescribed affidavit of his acceptance or refusal thereof and, if a refusal, the reasons therefor.
"(c) An applicant for renewal not domiciled in the United States shall be subject to and comply with the provisions of section 1 (d) hereof."

SEC. 8. Section 10 is amended by changing the colon following the word "conducted" to a period and striking the words "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 used."

SEC. 9. Subsection (a) of section 12 is amended by changing the period at the end thereof to a colon and inserting after the colon the following: "Provided. That in the case of every applicant claiming concurrent use, or in the case an application to be placed in an interference, as provided for in section 16 of this Act, the mark, if otherwise registrable, shall be published subject to the determination of the rights of the parties to such proceedings."

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Subsection (c) of section 12 is amended by striking therefrom the words "setting forth those goods stated in the registration on which said" and inserting in lieu thereof the words "stating that the".
Section 12 is further amended by adding a new subsection (d) as follows:
"(d) The Commissioner shall maintain a public search file containing reproductions of all marks for which applications for registration have been filed and are pending. Promptly upon the filing of an application for registration of a mark, a reproduction of said mark shall be filed in the search file together with the name of the applicant, the date of filing of the application, the goods or services and class for which registration is sought, the name and address of the applicant's attorney; and the Commissioner shall furnish such information to subscribers."

SEC. 10. Section 14 is amended by striking said section in its entirely and inserting in lieu thereof the following:
"Any person who believes that he is or will be damaged by the registration of a mark 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, file a verified petition to cancel said registration stating the grounds therefor--

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"(a) before the registered mark shall have acquired an incontestable status as provided by section 15 of this Act; or
"(b) at any time if the registered mark has been abandoned or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsection (a), (b), or (c) of section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration hereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used: or"
"(c) at any time in the case of a certification mark on the ground that the registrant does not control, or is not able legitimately to exercise control over, the use of such mark."

SEC. 11. Section 15 is amended by striking therefrom "(c) and (d)" following the word "subsections" and inserting in lieu thereof "(b) and (c)": and by striking therefrom the semicolon and the word "and" following the word "hereof" at the end of paragraph numbered (3) and inserting a period in lieu thereof; and by striking therefrom paragraph numbered (4) in its entirely.

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SEC. 12. Section 16 is amended by striking therefrom the word "purchasers" following the word "deceive".

SEC. 13. Section 21 is amended by striking the entire section, and inserting in lieu thereof the following:
"(a) Any applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, or any registrant who has filed an affidavit as provided in section 8 or 9, who is dissatisfied with the decision of the Commissioner, may appeal to the United States Court of Customs and Patent Appeals: Provided. That such appeal shall be dismissed by said Court of Customs and Patent Appeals if any adverse party to the proceeding other than the Commissioner shall, within twenty days after the appellant shall have filed notice of appeal according to section 21 (b) hereof, file notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 21 (c) hereof. Thereupon the appellant shall have thirty days thereafter within which to file a complaint in a civil action under said section 21 (c), in default of which the decision appealed from shall govern the further proceedings in the case.
"(b) When an appeal is taken to the United States

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Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and file in the Patent Office, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner shall appoint, his reasons of appeal specifically set forth in writing.
(c) The Court shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and to the parties thereto. The Commissioner shall transmit to the Court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee, and in an ex parte case the Commissioner shall furnish the Court with the grounds of the decision of the Patent Office, in writing, touching all the points involved by reasons of appeal.
(d) The Court, on petition, shall hear and determine such appeals and affirm or, revise the decision appealed from in a summary way on the evidence produced before the Commissioner at such early and convenient time as the Court may appoint; and the affirmance or revision shall be confined to the points set forth in the reasons of appeal, except that the Court may consider other grounds of record on due notice to the parties. After hearing the case, the Court shall return to the Commissioner a certificate of its

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proceedings and decision, which shall be entered of record in the Patent Office and shall govern the further proceedings in the case; but no opinion or decision of the Court in any such case shall preclude any interested person from contesting the validity of such trade--mark registration in any court wherein the same may be called in question.
(e) Whenever a person authorized by section 21 (a) hereof to appeal to the United States Court of Customs and Patent Appeals is dissatisfied with the decision of the Commissioner, said person, unless appeal has been taken to said Court of Customs and Patent Appeals, and such appeal is pending or has been decided, in which case no action may be brought under this section, may have remedy by a civil action if the complaint is filed within such time after such decision, not less than sixty days, as the Commissioner appoints, and due notice thereof given to all other parties to the proceeding in the Patent Office: and the Court having cognizance thereof, on notice to adverse parties and other due proceedings had, may order, among other things, the registration of a mark, the cancellation (in whole or in part) or restriction of any registration, the restoration

of cancelled registrations, and other rectifications of the registrar with respect to the registration of any party to the action, as the rights of the parties may be established in the proceedings. Decrees and orders shall be certified by the court to the

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Commissioner, who shall make appropriate entry upon the records of the Patent Office and who shall be controlled thereby.
"The Commissioner shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed, and the Commissioner shall have the right to intervene in the action".
In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not. In all suits brought hereunder where there are adverse parties, the record in the Patent Office shall be admitted, in whole or in part, on motion of any party, subject to such terms and conditions as to costs, expenses, and the further cross--examination of the witnesses as the court may impose, without prejudice, however, to the right of any party to take further testimony. The testimony and exhibits, or parts thereof, of the record in the Patent Office, when admitted, shall have the same force and effect as if originally taken and produced in the suit.
"Upon the filing of a complaint in the District Court of the United States for the District of Columbia, wherein remedy is sought under section 21 (c) hereof without seek--
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ing other remedy, if it shall appear that there is an adverse party residing in a foreign country, or adverse parties residing in a plurality of districts not embraced within the same State, the court shall have jurisdiction thereof and writs shall, unless the adverse party or parties voluntarily make appearance, be issued against all of the adverse parties with the force and effect and in the manner set forth in section 1392 of title 28, United States Code: Provided. That writs issued against parties residing in foreign countries pursuant to this section may be served by publication or otherwise as the court shall direct."

SEC. 14. Section 22 is amended by changing the period at the end thereof to a colon and adding the words "Provided. That registration of marks under the Act of March 3, 1881, or the Act of February 20, 1905, shall not constitute constructive notice for any time prior to July 5. 1947."

SEC. 15. Section 23 is amended by striking from the last paragraph thereof the words "has begun the lawful use of his mark in foreign commerce and that he".

SEC. 16. Section 24 is amended by inserting in the second sentence thereof, following the word "time", first appearance, the following:". upon payment of the prescribed fee and the filing of a verified petition stating the grounds therefor.".

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SEC. 17. Section 26 is amended by inserting the words "the proviso of section 2(d)," after the words "advantages of".

SEC. 18. Section 28 is amended by inserting after the numerals "1920," the words "shall not constitute constructive notice and",

SEC. 19. Section 29 is amended by inserting the words "on or in connection with the goods or services" following the word "used"; by striking the words "mark goods bearing the registered mark" and inserting in lieu thereof the words "give such notice of registration".

SEC. 20. Section 30 is amended by inserting at the beginning of the third sentence thereof the words "On request of the applicant," and changing the initial letter of the word "The" in said sentence to a lower--case letter; by striking the word "registered" from said sentence; and by striking the words", upon payment of a fee equaling the sum of the fees for each registration in each class," and inserting in lieu thereof: "Provided. That fees equaling the sum of the fees for an application in each class have been paid."

SEC. 21. Section 31 is amended by inserting after the ninth semicolon the words "for filing petition to revive an abandoned application, $10:"; by striking the comma following the word "disclaimer" in the final clause and inserting

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in lieu thereof the word "or" and by striking from said final clause the words "surrender, or cancellation".

SEC. 22. Subsection (1) of section 32 is amended by striking the entire subsection and inserting in lieu thereof the following:
"Any person who shall, without the consent of the registrant
"(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to deceive, or to cause confusion, or to cause mistake; or
"(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be use in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of any goods or services; or
"(c) employ a registered mark in commerce otherwise than as a trade or service mark in such manner as to be likely to cause the mark to lose its significance as a mark.
shall be liable in a civil action by the registrant for the 16
remedies hereinafter provided. 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 limitation is intended to be used to deceives, or to cause confusion, or to cause mistake. Under subsection (c) hereof, the registrant shall not be entitled to recover profits or damages."

SEC. 23. Paragraph (b) of subsection (2) of section 32 is amended by striking the word "Published" and inserting in lieu thereof the word "Publisher".

SEC. 24. Subsection (b) of section 33 is amended by striking therefrom the word "certificate", second appearance, and inserting in lieu thereof "affidavit filed under the provisions of said section 15".
Paragraph (3) of subsection (b) of section 33 is amended by striking therefrom the words "has been assigned and"; and by striking therefrom the word "assignee" and inserting in lieu thereof the words "registrant or person in privity with the registrant."

Paragraph (5) of subsection (b) of section 33 is amended by striking therefrom the word "the" following the words "date prior to" and inserting in lieu thereof the words "registration of the mark under this Act or"; and by striking therefrom "(a) or" following the word "subsection".
Paragraph (6) of subsection (b) of section 33 is

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amended by inserting the words "registration under this Act" after the word "the", second appearance: by striking therefrom "(a) or" following the word "subsection", first appearance: by striking from the proviso the words "only where the said mark has been published pursuant to subsection (c) of section 12 and shall apply"; by striking the words "the date of" following the words "prior to" in the said proviso and inserting in lieu thereof" such registration or such"; and by striking therefrom the words "subsection (a) or (c) of" following the word "under" in said proviso.
Paragraph (7) of subsection (b) of section 33 is amended by striking said paragraph in its entirety.

SEC. 25. Section 35 is amended by striking therefrom "31(1)(b)" and inserting in lieu thereof "32".

SEC. 26. Section 42 is amended by striking therefrom the initial word "That" and by capitalizing the then initial Word No"; by striking the word "the" following the words "simulate the name of"; by striking the words "manufacture, or" following the work "domestic", first appearance; by striking the word "trade", each appearance: by striking the words "in accordance with the provisions of this Act" following the word "registered", first appearance, and inserting in lieu thereof the words "on the principal register, or under the Act of March 3, 1881, or under the Act of February 20, 1905,"; and by striking therefrom the words", issued

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in accordance with the provisions of this Act," and inserting in lieu thereof the words "on the principal register, or under the Act of March 3, 1881, or under the Act of February 20, 1905.".

SEC. 27. Subsection (b) of section 44 is amended by inserting the words "by treaty or law affords similar privileges to citizens and residents of the United States, or which following the word "which", first appearance.
Subsection (c) of section 44 is amended by inserting after the article "a" in the second sentence the words "certification or a"; and by striking from said second sentence the words "application for or".

SEC. 28. Section 45 is amended by inserting in the fifth paragraph thereof, being the definition of Applicant, Registrant, the word "predecessors", following the word "and", first appearance.
The ninth paragraph of said section, being the definition of Trade Name, Commercial Name, is amended by inserting a comma between the words "commercial" and "agricultural".
The thirteenth paragraph of said section, being the definition of a Collective Mark, is amended by striking the paragraph in its entirety and inserting in lieu thereof "The term "collective mark" means a mark used by the members of a cooperative, an association, or other collective group

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organization, to identify the goods or services of such members and distinguish them from the goods or services of another, or to indicate membership in a union, an association, or other organization."

The fifteenth paragraph of said section, being the definition of Use in Commerce, is amended by changing the period at the end of said paragraph to a comma and adding the words "or the person rendering the service is engaged in commerce."

The seventeenth paragraph of said section, being the definition of Colorable Imitation, is amended by deleting the word "purchasers" at the end thereof.

The final paragraph of said section is amended by striking thereform the word "commerce" and inserting in lieu thereof the word "commerce".