98TH CONGRESS
1ST SESSION

S. 1990

To clarify the circumstances under which a trademark may be canceled or abandoned.

IN THE SENATE OF THE UNITED STATES

OCTOBER 21 (legislative day, OCTOBER 17), 1983

Mr. HATCH (for himself, Mr. LEAHY, Mr. THURMOND, Mr. LAXALT, Mr. DOLE, Mr. SIMPSON, Mr. GRASSLEY, Mr. EAST, Mr. DECONCINI, Mr. BAUCUS, Mr. HEFLIN, Mr. MCCLURE, and Mr. HELMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To clarify the circumstances under which a trademark may be canceled or abandoned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Trade-Mark Clarification Act of 1983".

SEC. 2. Section 14(c) of the Lanham Trade-Mark Act (15 U.S.C. 1064(c)) is amended by adding before the semicolon at the end of such section the following: ", except that a registered mark shall not be deemed to be the common descriptive name of goods or services merely because such

mark is also used as a proper name of or to identify a unique product or service. The primary significance of the registered mark to the purchasing public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used".

SEC. 3. Section 45 of the Lanham Trade-Mark Act (15 U.S.C. 1127) is amended as follows:

(a) Strike out "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." and insert in lieu thereof the following: "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 and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, albeit anonymous.".

(b) Strike out "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 insert in lieu thereof the following: "The term 'service mark' means a mark used in the sale or advertising of services to identify and distinguish the services of one

person, including a unique service, from the services of others and to indicate the source of the services, albeit anonymous.".

(c) Add at the end of subparagraph (b) in the definition of "Abandonment of mark" the following new sentence: "The primary significance of the mark to the purchasing public rather than purchaser motivation shall be the test for determining abandonment under this subparagraph.".

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