

S. 1154

IN THE SENATE OF THE UNITED STATES

MARCH 2, 1967

MR. McCLELLAN (for himself and MR. SCOTT) introduced the following bill,
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That this Act be cited as the "Unfair Competition Act of
4 1967".

5 SEC. 2 The title of the Act entitled "An Act to provide
6 for the registration and protection of trademarks used in com-
7 merce, to carry out the provisions of certain international con-
8 ventions, and for other purposes," approved July 5, 1946
9 (60 Stat. 427), is amended by inserting after "commerce,"
10 the words "to protect persons against unfair competition."

1 SEC. 3. Section 32 (2) (15 U.S.C. 1114 (2)) of said
2 Act is amended by deleting its present introduction and para-
3 graph (a) and substituting therefor: "Notwithstanding any
4 other provision of this Act, the remedies given under this Act
5 for the infringement of any right shall be limited as follows:

6 (a) where an infringer is engaged solely in the
7 business of printing for others and establishes that he
8 was an innocent infringer, the owner of the right in-
9 fringed shall be entitled as against such infringer only
10 to an injunction against future printing,"

11 SEC. 4. Section 34 (15 U.S.C. 1116) of said Act is
12 amended by deleting from the end of the first sentence thereof
13 "of the registrant of a mark registered in the Patent Office"
14 and substituting therefor "protected under this Act", and by
15 inserting in the third paragraph after the word "proceeding"
16 (first occurrence) the words "involving a registered trade-
17 mark and."

18 SEC. 5 Section 35 (15 U.S.C. 1117) of said Act is
19 amended by deleting the first sentence thereof and substitut-
20 ing therefor "When a violation of any right protected under
21 this Act shall have been established in any civil action aris-
22 ing under this Act, the plaintiff shall be entitled, subject to
23 the provisions of sections 29 and 32 and subject to the prin-
24 ciples of equity, to recover (1) defendant's profits, (2) any
25 damages sustained by the plaintiff, and (3) the costs of the

1 action.” and by inserting a new sentence as the last sentence
2 of said section to read “The court in its discretion may
3 award attorneys’ fees to the prevailing party in appropriate
4 cases.”

5 SEC. 6. Section 36 (15 U S C 1118) of said Act is
6 amended to read “In any action arising under this Act,
7 the court may order that labels, signs, prints, packages,
8 wrappers, receptacles, and advertisements in the possession
9 of the defendant, the use or intended use of which is in viola-
10 tion of any right protected under this Act, and all plates,
11 molds, matrices, and other means of making the same,
12 shall be delivered up and destroyed.”

13 SEC. 7. Section 43 (15 U S C 1125) of said Act is
14 amended by deleting subsections (a) and (b) and sub-
15 stituting therefor:

16 “SEC. 43. (a) Any person who shall engage in any
17 act, trade practice, or course of conduct, in commerce,
18 which—

19 “(1) causes or is likely to cause confusion, mistake,
20 or deception as to the affiliation, connection, or associa-
21 tion of such person, or as to the origin, sponsorship, or
22 approval of his goods, services, or vocational activities, or

23 “(2) either by a false or misleading statement or
24 by omission of material information, misrepresents his
25 goods, services, vocational activities, or then geographic

1 origin, or misrepresents or disparages another person's
2 goods, services, vocational activities, or their geographic
3 origin, or

4 “ (3) results or is likely to result in passing off the
5 goods, services, or vocational activities which he offers
6 as or for those of any other person, or

7 “ (4) results or is likely to result in the wrongful
8 disclosure or misappropriation of a trade secret or other
9 research or development or commercial information
10 maintained in confidence by another, or

11 “ (5) results or is likely to result in misappropriation
12 of quasi-property of another, not otherwise protected by
13 Federal statute, or

14 “ (6) without being limited to or by the foregoing
15 subsections (1) through (5), is otherwise contrary to
16 commercial good faith or to normal and honest practices
17 of the business or vocational activity in which he is
18 engaged,

19 shall be liable in a civil action for unfair competition.

20 “ (b) The remedies provided in this Act shall be avail-
21 able to any person whose business or vocational activity, or
22 the goodwill thereof, is or is likely to be damaged, to pre-
23 vent and to recover for the forms of unfair competition
24 enumerated in paragraph (a) hereof: *Provided*, That it shall
25 not be necessary to prove competition between the parties,

1 actual confusion, mistake, or deception, or intent to injure
2 the business or vocational activity of any other person or
3 the goodwill thereof

4 “(c) The relief provided for by this section shall be
5 in addition to and shall not affect those remedies otherwise
6 available under this Act, under the common law, or pursuant
7 to the statutes of any State or of the United States (includ-
8 ing patent and copyright statutes). Nothing in this section
9 shall be construed so as to preempt the jurisdiction of any
10 State to grant relief in cases of unfair competition.”

11 SEC. 8. Section 44 (h) (15 U.S.C. 1126h) of said Act
12 is amended to read “Any person designated in paragraph
13 (b) of this section shall be entitled to the remedies pro-
14 vided in this Act for unfair competition and infringement
15 of marks.”

16 SEC. 9. The provided clause of section 46 (a) is
17 amended by deleting “in force on the effective date
18 of this Act” and inserting after “which does not relate to
19 trademarks” the phrase “or unfair competition,”

20 SEC. 10. Section 1338 (a) of title 28, United States
21 Code, the first sentence is amended by inserting “, unfair
22 competition” after “copyrights.”

23 SEC. 11. Section 1338 (b) of title 28, United States
24 Code, is amended to read:

25 “(b) The district courts shall have original jurisdic-

1 tion of any civil action asserting a claim of unfair competition
2 under the law of any State, when joined with a substantial
3 and related claim under any Act of Congress relating to
4 patents, copyrights, unfair competition, or trademarks.”

5 SEC. 12. This Act shall become effective upon enact-
6 ment, but except as otherwise herein specifically provided it
7 shall not affect any suit, proceeding, or appeal then pending.

90TH CONGRESS
1ST SESSION

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