

# H. R. 15367.

IN THE HOUSE OF REPRESENTATIVES.

APRIL 23, 1904.

Mr. SOUTHWICK introduced the following bill; which was referred to the Committee on Patents and ordered to be printed.

## A BILL

To provide for the registration and protection of trade-marks.

- 1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That any person claiming to be the owner of a trade-mark  
4       used in commerce with foreign nations, or among the several  
5       States, or with Indian tribes, or with the insular or other  
6       possessions of the United States, provided such owners shall  
7       be domiciled in the United States or insular or other posses-  
8       sions or territory thereof, or located in any foreign country  
9       or tribes, which, by treaty, convention, or law affords simi-  
10      lar privileges to the citizens of the United States, may obtain  
11      registration for such trade-mark by complying with the fol-  
12      lowing requirements:  
13      First. By causing to be recorded in the Patent Office a  
14      statement specifying name, domicile, location, and citizenship  
15      of applicant; the class of merchandise and the particular de-



1 description of goods comprised in such class to which the mark  
2 is appropriated; a description of the mark and a statement of  
3 the manner of applying the same to the goods, and the length  
4 of time during which the trade-mark has been used. With  
5 this statement shall be filed a drawing of the trade-mark,  
6 signed by the applicant or his attorney, and such number of  
7 specimens of the trade-mark as actually used as may be re-  
8 quired by the Commissioner of Patents.

9       Second. By paying into the Treasury of the United  
10 States the sum of ten dollars and complying with such regu-  
11 lations as may be prescribed by the Commissioner of Patents.

12       SEC. 2. That the application must be accompanied by  
13 a written declaration verified by the person, or by a member  
14 of a firm, or by an officer of a corporation applying, to the  
15 effect that such party has at the time a right to the use of  
16 the trade-mark sought to be registered, and that no other per-  
17 son, firm, or corporation has the right to such use either in  
18 the identical form or in any such near resemblance thereto as  
19 might be calculated to deceive; that such trade-mark is used  
20 in commerce between the several States, or with foreign  
21 nations, or with Indian tribes, or with the insular or other  
22 possessions of the United States, and that the description and  
23 facsimile presented truly represent the trade-mark sought to  
24 be registered.

25       SEC. 3. That the filing date of any such application



1 shall be noted and recorded, but no alleged trade-mark shall  
2 be registered unless the same appear to be lawfully used in a  
3 lawful business by the applicant in the commerce above indi-  
4 cated, or is within the province of a treaty, convention, or  
5 declaration with a foreign power, nor which is identical or  
6 substantially identical with a registered or known trade-mark  
7 owned by another and appropriated to the same class of  
8 merchandise, or which so nearly resembles some other person's  
9 registered or known trade-mark as to be likely to cause con-  
10 fusion or mistake in the mind of the public as to deceive pur-  
11 chasers. In an application for registration the Commissioner  
12 of Patents shall decide the presumptive lawfulness of a claim  
13 to the alleged mark, and in any dispute between an applicant  
14 and a previous registrant, or between applicants, he shall fol-  
15 low as far as the same may be applicable the practice of courts  
16 of equity of the United States in analogous cases.

17       SEC. 4. That certificates of registration under this Act  
18 shall be issued in the name of the United States of America,  
19 under the seal of the Department of the Interior, and shall  
20 be signed by the Commissioner of Patents or the Acting Com-  
21 missioner, and a record thereof, together with printed copies  
22 of the specifications and drawings or facsimile, shall be kept by  
23 the Commissioner of Patents. Copies of trade-marks and of  
24 statements and declarations filed therewith, and certificates of



1 registration so signed and sealed shall be evidence in any suit  
2 in which such trade-marks may be brought into controversy.

3       SEC. 5. That the certificate of registry shall remain in  
4 force for thirty years from its date, except in cases where the  
5 trade-mark is claimed for and applied to articles not manu-  
6 factured in this country, and in which it receives protection  
7 under the laws of a foreign country for a shorter period, in  
8 which case it shall cease to have any force in this country by  
9 virtue of this Act at the time that such trade-mark ceases to  
10 be exclusive property elsewhere. At any time during the  
11 six months prior to the expiration of the term of thirty years  
12 such registration may be renewed from time to time on the  
13 same terms and for a like period.

14       SEC. 6. That the registration of a trade-mark shall be  
15 prima facie evidence of ownership. Any person who shall  
16 reproduce, counterfeit, copy, or colorably imitate any trade-  
17 mark registered under this Act and affix the same to mer-  
18 chandise of the same descriptive properties as those de-  
19 scribed in the registration shall be liable to an action on  
20 the case for damages for the wrongful use of said trade-  
21 mark at the suit of the owner thereof; and the party  
22 aggrieved shall also have his remedy according to the course  
23 of equity to enjoin the wrongful use of such trade-mark used  
24 in commerce with foreign nations, or among the several States,  
25 or with the Indian tribes, or with the insular or other posses-



1 sions of the United States, as aforesaid, and to recover com-  
2 pensation therefor in any court having jurisdiction over the  
3 person guilty of such wrongful act; and whenever in any  
4 such action a verdict or decree is rendered for the plaintiff  
5 the court may enter judgment thereon for any sum above the  
6 amount of the actual damages sustained, according to the  
7 circumstances of the case, not exceeding three times the  
8 amount of such verdict or actual damages sustained, together  
9 with costs. The courts of the United States shall have  
10 original and appellant jurisdiction in such cases, without re-  
11 gard to the amount in controversy.

12       SEC. 7. That no action or suit shall be maintained under  
13 the provisions of this Act when the trade-mark is used in any  
14 unlawful business, or upon any article injurious in itself, or  
15 upon any article in connection with which false representa-  
16 tions are made, or which mark has been used with the design  
17 of deceiving the public in the purchase of merchandise.

18       SEC. 8. That any name, word, phrase, symbol, or  
19 device, or the name of a deceased person or character  
20 famous in history, fiction, or literature, or the name of a living  
21 celebrity with the consent of such person, by which the  
22 origin or ownership of goods can be distinguished, shall be  
23 considered proper subject-matter for trade-mark registration  
24 under this Act: *Provided*, That no merely descriptive word  
25 or phrase, or merely the name of the applicant (unless such



1 name be in a distinctive shape or consist in a written signa-  
2 ture in original or facsimile of the applicant), or a merely geo-  
3 graphical name or term shall prima facie constitute a trade-  
4 mark which may be exclusively appropriated under this Act:  
5 *Provided further*, That no public arms or decorations, in-  
6 cluding the national flag, shall be registrable under this Act.

7 SEC. 9. That the following shall be the rates for trade-  
8 mark fees:

9 On filing each original application for registration of a  
10 trade-mark, ten dollars.

11 On filing each application for renewal of registration of  
12 a trade-mark, ten dollars.

13 On an appeal from the examiner in charge of trade-  
14 marks to the Commissioner of Patents, fifteen dollars.

15 On an appeal from the decision of the examiner in  
16 charge of interferences, awarding ownership of a trade-mark,  
17 to the Commissioner of Patents, fifteen dollars.

18 SEC. 10. That whenever application is made for regis-  
19 tration of a trade-mark which is substantially identical with  
20 a trade-mark appropriated to the same class of goods for  
21 which a certificate of registration has been previously issued  
22 to another, or for registration of which another has previously  
23 made application, or which so nearly resembles such trade-mark  
24 as, in the opinion of the Commissioner, to be likely to be mis-



1 taken therefor by the public, and the applicant shall show to  
2 the satisfaction of the Commissioner that he used the trade-  
3 mark of his application prior to the date of filing of the applica-  
4 tion on which such previous registration was granted, or the  
5 date of filing of such prior application, as the case may be, or  
6 shall show to the satisfaction of the Commissioner that the  
7 registrant or prior applicant has abandoned the use of such  
8 mark, the Commissioner shall suspend such latter application  
9 and give notice thereof to the registrant or prior applicant,  
10 as the case may be. If within such time, not less than thirty  
11 days from such notice, as the Commissioner shall prescribe,  
12 the registrant or prior applicant files in the Patent Office  
13 notice of opposition to the grant of such application, stating  
14 the reasons thereof, the Commissioner shall declare that an  
15 interference exists as to such trade-mark, and shall direct the  
16 examiner in charge of interferences to determine the question  
17 of ownership of such trade-mark. And the Commissioner  
18 may issue a certificate of registration to the party who is ad-  
19 judged to be the owner of the trade-mark, unless the adverse  
20 party appeals from the decision of the examiner in charge of  
21 interferences within such time, not less than twenty days.

22       SEC. 11. That every applicant for registration of a trade-  
23 mark not domiciled in the United States shall, before the issu-  
24 ance of the certificate of registration, designate by a notice in  
25 writing, filed in the Patent Office, some person residing



1 within the United States on whom process or notice of pro-  
2 ceedings affecting the right of ownership of the trade-mark of  
3 which such person may claim to be the owner, brought under  
4 the provisions of this Act, or under other laws of the United  
5 States, may be served with the same force and effect as if  
6 served upon the applicant or registrant in person. For the  
7 purposes of this Act it shall be deemed sufficient to serve  
8 such notice upon such applicant or registrant by leaving a  
9 copy of such process or notice, addressed to him at the last  
10 address of which the Commissioner of Patents has been no-  
11 tified.

12       SEC. 12. That if an applicant for registration of a trade-  
13 mark is dissatisfied with the decision of the Commissioner of  
14 Patents he may appeal to the Court of Appeals of the Dis-  
15 trict of Columbia on complying with the conditions required  
16 in case of an appeal from the decision of the Commissioner  
17 by an applicant for patent or a party to an interference as to  
18 an invention.

19       SEC. 13. That any person who shall procure registration  
20 of a trade-mark or entry thereof in the office of the Commis-  
21 sioner of Patents by a false or fraudulent declaration or rep-  
22 resentation orally or in writing, or by any fraudulent means,  
23 shall be liable to pay any damages sustained in consequence  
24 thereof to the injured party, to be recovered in an action on  
25 the case.



1        SEC. 14. That nothing in this Act shall prevent, lessen,  
2        impeach, or avoid any remedy at law or in equity which any  
3        party aggrieved by any wrongful use of any trade-mark might  
4        have had if the provisions of this Act had not been passed.

5        SEC. 15. That all applications for registration pending  
6        in the Office of the Commissioner of Patents at the time of  
7        the passage of this Act, may be amended with a view of  
8        bringing them and the certificates issued upon such applica-  
9        tions under its provisions, and the prosecution of said appli-  
10       cations may be proceeded with under the provisions of this  
11       Act.

12       SEC. 16. That nothing in this Act shall be construed as  
13       unfavorably affecting a claim to a trade-mark after a term  
14       of registration shall have expired, nor to give cognizance to  
15       any court of the United States in an action or suit between  
16       citizens of the same State, unless the trade-mark in contro-  
17       versy is used on goods intended to be transported to a foreign  
18       country or in lawful commercial intercourse with an Indian  
19       tribe, or in commerce among the several States, or with the  
20       insular or other possessions of the United States.

21       SEC. 17. That writs of certiorari may be granted by the  
22       Supreme Court of the United States for the review of cases  
23       arising under this Act, in the same manner as provided for  
24       patent cases by the Act creating the circuit courts of appeals.



1           SEC. 18. That in any case involving the right to a trade-  
2 mark registered in accordance with the provisions of this Act,  
3 in which a verdict has been found for the plaintiff or an in-  
4 junction issued, the court may order that all labels, signs,  
5 prints, packages, wrappers, or receptacles in the possession of  
6 the defendant bearing the trade-mark of the plaintiff or com-  
7 plainant, or any reproduction, counterfeit, or colorable imita-  
8 tion thereof, shall be delivered up and destroyed. Any in-  
9 junction that may be granted upon hearing, after notice to  
10 the defendant, to prevent the violation of any right of the  
11 owner of a trade-mark registered in accordance with the pro-  
12 visions of this Act, by any circuit court of the United States,  
13 or by a judge thereof, or by the supreme court of the District  
14 of Columbia, or by a judge thereof, may be served on the  
15 parties against whom such injunction may be granted any-  
16 where in the United States where they may be found, and  
17 shall be operative and may be enforced, by proceedings to  
18 punish for contempt or otherwise, by the court by which such  
19 injunction was granted or by any other circuit court or judge  
20 thereof in the United States, or by the supreme court of the  
21 District of Columbia or judge thereof. The said courts or  
22 judges thereof shall have jurisdiction to enforce said injunc-  
23 tion, as herein provided, as fully as if the injunction had been  
24 granted in a circuit court in which it is sought to be enforced.

25           The clerk of the court or judge granting the injunction



1 shall, when required to do so by the court before which appli-  
2 cation to enforce said injunction is made, transmit without  
3 delay to said court a certified copy of all the papers on which  
4 the said injunction was granted that are on file in his office.

5       SEC. 19. That should registration of a trade-mark be  
6 refused upon a known unregistered mark which is identical  
7 or substantially identical with the mark sought to be regis-  
8 tered, and appropriated to the same class of goods as the  
9 mark of the application, the Commissioner of Patents shall,  
10 upon the request of the applicant, or his successors or assigns,  
11 suspend action on the application and give notice thereof to  
12 the owner of the unregistered mark. If, within such time,  
13 not less than thirty days from such notice, as the Commissioner  
14 shall prescribe, the owner of the unregistered mark fail to file  
15 his application within the time described by the Commissioner,  
16 the unregistered mark shall not be a bar to the registration  
17 of the mark of the application.

18       SEC. 20. That certificates of registration in force at the  
19 date at which this Act takes effect shall remain in full force  
20 and receive all the benefits of this Act for the term for which  
21 they were issued, and shall be renewable on the same condi-  
22 tions and for the same period as certificates issued under the  
23 provisions of this Act.

24       SEC. 21. That the Commissioner of Patents is authorized  
25 to make rules and regulations not inconsistent with law for



1 the conduct of proceedings in reference to the registration of  
2 trade-marks under this Act.

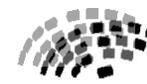
3       SEC. 22. That no article of imported merchandise which  
4 shall copy or simulate the name of any domestic manufacture or  
5 manufacturer or trader, or of any manufacturer or trader located  
6 in any foreign country which by treaty, convention, or law af-  
7 fords similar privileges to citizens of the United States, or which  
8 shall copy or simulate a trade-mark registered in accordance  
9 with the provisions of this Act, or shall bear a name or mark  
10 calculated to induce the public to believe that the article is manu-  
11 factured in the United States or that it is manufactured in any  
12 foreign country or locality other than the country in which it  
13 is in fact manufactured, shall be admitted to entry at any  
14 custom-house of the United States. And in order to aid the  
15 officers of the customs in enforcing this prohibition, any  
16 domestic manufacturer or trader and any foreign manufacturer  
17 or trader who is entitled under the provisions of a treaty, con-  
18 vention, declaration, or agreement between the United States  
19 and any foreign country to the advantages accorded by law  
20 to citizens of the United States in respect to trade or com-  
21 mercial marks and commercial names, may require his name  
22 and residence and name or mark of the locality in which his  
23 goods are manufactured, and a copy of the certificate of regis-  
24 tration of his trade-mark issued in accordance with the pro-  
25 visions of this Act, to be recorded in books which shall be



1 kept for this purpose in the Department of the Treasury, un-  
2 der such regulations as the Secretary of the Treasury shall  
3 prescribe, and may furnish to the Department facsimiles of  
4 his name, the name or mark of the locality in which his goods  
5 are manufactured, or of his registered trade-mark; and there-  
6 upon the Secretary of the Treasury shall cause one or more  
7 copies of the same to be transmitted to each collector or other  
8 proper officer of the customs.

9       SEC. 23. That it shall be the duty of the registrant to  
10 give notice to the public that the trade-mark is registered,  
11 either by affixing thereon the words, "Registered in United  
12 States Patent Office," or abbreviated thus: "Reg. U. S. Patent  
13 Office," or when from the character or size of the trade-mark,  
14 or from its manner of attachment to the article to which it is  
15 appropriated, this can not be done, then by affixing a label  
16 containing the like notice to the package or receptacle wherein  
17 the article or articles are inclosed; and in any suit for infringe-  
18 ment by a party failing so to give notice of registration, no  
19 damages shall be recovered except on proof that the defendant  
20 was duly notified of infringement and continued the same  
21 after such notice.

22       SEC. 24. That this Act shall take effect upon its passage.  
23 All Acts and parts of Acts inconsistent herewith are hereby  
24 repealed.



1917-1918

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# A BILL

To provide for the registration and protection  
of trade-marks.

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By Mr. SOUTHWICK.

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APRIL 23, 1904.—Referred to the Committee on Patents and  
ordered to be printed.

# H. R. 15368.

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IN THE HOUSE OF REPRESENTATIVES.

APRIL 23, 1904.

Mr. BOWIE introduced the following bill; which was referred to the Committee on Pensions and ordered to be printed.

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## A BILL

Granting an increase of pension to Andrew J. Levi.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That the Secretary of the Interior be, and he is hereby, au-  
4       thorized and directed to place on the pension roll, subject to  
5       the provisions and limitations of the pension laws, the name  
6       of Andrew J. Levi, late of Company D, First Regiment  
7       Kentucky Volunteer Cavalry, war with Mexico, and pay him  
8       a pension at the rate of twenty dollars per month in lieu of  
9       that he is now receiving. .





58<sup>TH</sup> CONGRESS, }  
2<sup>D</sup> SESSION. } **H. R. 15368.**

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# **A BILL**

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