
IN THE SENATE OF THE UNITED STATES.

DECEMBER 5, 1900.

Mr. PRITCHARD introduced the following bill; which was read twice and referred to the Committee on Patents.

A BILL

To regulate and protect marks, trade-marks, commercial names, and symbols used in commerce, and to enforce treaties regarding the same.

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

3 SHORT TITLE.

4 That this Act shall be known as the trade-marks Act.

5 OBJECT OF ACT.

6 SEC. 2. That all marks, trade-marks, commercial names
7 and symbols used in commerce with foreign nations or among
8 the several States or with the Indian tribes shall be used and
9 their use protected in the manner herein prescribed.

10 COUNTRY OF ORIGIN AND QUANTITY TO BE MARKED.

11 SEC. 3. That all articles manufactured in foreign coun-
12 tries, upon importation into the United States, shall be plainly
13 marked in legible English words, in a conspicuous place, with



1 the name of the country of their origin, or, when from the
2 character or size of the articles this can not be done, the
3 package in which one or more of such articles are inclosed
4 shall be marked in the same manner with the name of the
5 country of their origin, together with a plain statement of
6 the quantity of the contents of such package; in default of
7 which the same shall not be admitted to entry at any custom-
8 house of the United States.

9 The Secretary of the Treasury may make rules permit-
10 ting the marking of such articles and packages and the
11 amendment of the statement of quantity, and such prohibi-
12 tion of entry shall, when such rules are complied with, be
13 removed.

14 FOODS AND MEDICINES BEARING DECEPTIVE MARKS.

15 SEC. 4. That no article commonly used as a food or a
16 medicine, to which is affixed a mark likely to deceive the con-
17 sumer as to the place of its origin or as to its composition,
18 shall be made an object of commerce with foreign nations or
19 among the several States or with the Indian tribes. Such an
20 article so marked shall be refused entry at every custom-house
21 of the United States, and may be seized by the marshal of
22 the proper district under written authority of the district at-
23 torney of any district of the United States in which the same
24 or a part thereof may be found, in transit to or from a foreign
25 nation, but not over the territory of the United States in



1 bond, or in transit to or from an Indian tribe, or among the
 2 several States. Any person may file information with the
 3 district attorney, in which case the proceedings shall be for
 4 the joint benefit of such informer and of the United States, in
 5 equal parts.

6 The district attorney by whose authority the seizure was
 7 made shall forthwith institute proceedings in rem for the con-
 8 demnation and sale of the property seized, in the name of the
 9 United States, in the district court of the district, or in the
 10 Territorial court of the Territory, or in the supreme court of
 11 the District of Columbia, within which the said property or
 12 any part thereof may be found, which proceedings shall con-
 13 form as nearly as may be to proceedings in admiralty or reve-
 14 nue cases. And if it shall be found that the provisions of
 15 this section have been violated in respect to the said property,
 16 the same shall be condemned and sold as the court may decree,
 17 and the proceeds thereof paid to the Treasurer of the United
 18 States to the use of the United States, or one-half to such
 19 Treasurer and the other half to the person filing an informa-
 20 tion therein, as hereinbefore provided.

21 PERSONS ENTITLED TO EXCLUSIVE USE OF MARK—USE
 22 BY OTHERS FORBIDDEN.

23 SEC. 5. That a citizen of the United States, a member of
 24 an Indian tribe, a resident alien, or a citizen or subject of a
 25 government which by treaty or convention affords similar



1 privileges to citizens of the United States, or a person who
 2 has a bona fide industrial or commercial establishment in the
 3 territory of such government, may adopt for his use in com-
 4 merce with foreign nations or among the several States or
 5 with the Indian tribes a mark to distinguish his produce, his
 6 manufacture, or his merchandise or the merchandise over which
 7 he has control as a common carrier and shall be entitled to
 8 the exclusive use of such mark in such commerce on comply-
 9 ing with this Act. Another person making use of the same in
 10 such commerce shall be liable therefor as hereinafter provided.

11 REGISTRATION OF CERTAIN MARKS PERMITTED—WHAT
 12 DENIED.

13 SEC. 6. That a person mentioned in the last section may
 14 apply for the registration of a mark adopted by him for use
 15 as hereinbefore provided, and the same may be registered on
 16 the payment into the Treasury of the United States of the
 17 fees prescribed in this Act,

18 (a) Provided, that there shall not be registered, except
 19 as herein otherwise specified :

20 First. Public arms or decorations, including the national
 21 flag.

22 Second. A word or words referring to the nature or
 23 quality of the goods, or a geographical name or names, unless
 24 the applicant states in his application that he makes no claim
 25 of exclusive right to the use of those words or names.



1 Third. The name of a person, unless such name be
 2 printed or woven in a distinctive shape, or consist of the writ-
 3 ten signature in original or facsimile of the person who
 4 makes the application:

5 (b) *Provided further*, That at the time of making such
 6 application no other person entitled to register said mark
 7 shall have previously used the same in commerce with foreign
 8 nations, or among the several States, or with the Indian tribes,
 9 and the same shall not have been abandoned; except, how-
 10 ever, that whenever it shall appear that a registrant, at the
 11 time of making the application for registration, believed him-
 12 self to be the first to adopt and use the mark on the same
 13 class of merchandise, registration shall not be refused, and said
 14 mark or the registration thereof shall not be held invalid be-
 15 cause of its use in a foreign country or wholly within a single
 16 State.

17 (c) *Provided further*, That every trade-mark duly regis-
 18 tered in a country with which the United States has by treaty
 19 or convention provided for the reciprocal registration of trade-
 20 marks shall be entitled to registration in the manner and under
 21 the priority provided in such treaty or convention. But no
 22 citizen or subject of a foreign government not residing in the
 23 United States, otherwise entitled to register a mark under th s
 24 Act, shall be entitled to such registration until the mark sought
 25 to be registered shall have been registered by such foreign



1 government as a trade-mark valid within the territory of such
 2 government.

3 (d) *Provided further*, That nothing in this Act shall
 4 affect the right of a citizen or inhabitant of a State to the use
 5 of a mark used wholly within the boundaries of such State.

6 FORM OF APPLICATION.

7 SEC. 7. That before a mark shall be registered application
 8 therefor must be made to the Commissioner of Patents in the
 9 following form in duplicate:

10 To the Commissioner of Patents of the United States of
 11 America:

12 I (we), , apply for the registration as of (date)
 13 , of the annexed mark as a trade-mark, and state as
 14 follows: The principal place of business of applicant(s) is ,
 15 and applicant(s) has (have) a bona fide industrial (or com-
 16 mercial) establishment in . Applicant(s) is (are) resi-
 17 dent(s) of , and a citizen(s) of ; is incorpo-
 18 rated and exists under the laws of .

19 Applicant(s), when not residing in the United States,
 20 authorize(s) service of all papers or process relating to said
 21 mark and provided by this Act on the Secretary of the
 22 Treasury of the United States with the same force and effect
 23 as if served personally.

24 The mark is used (or is intended to be used) in com-



merce with foreign nations and among the several States and
with the Indian tribes on the following class of goods:

. (If applicant is not a resident of the United States
he must state his foreign registration as follows:) The mark
is registered in _____, under the number _____, for
the period of _____, for the following class of goods:

. (If a date of registration prior to date of filing
is desired, applicant must state:) The date of first application
in any foreign country is _____; application filed in
_____. The registration of said mark in (name country of
origin) _____ may expire because of the following (insert
causes for which it may expire): _____.

The following is a copy of the mark for which registra-
tion is sought:

Marks to be
inserted.

Date (place, day, month, and year) _____.

_____.

The application must be signed by the applicant or ap-
plicants, who shall annex thereto his or their oath in the fol-
lowing form:

FORM OF AFFIDAVIT.

(Place where oath is made), ss:

_____, being duly (severally) sworn (affirmed),



(Note.—The oath may be made before any person within the United States authorized by law to administer oaths, or when the applicant resides in a foreign country, before any minister, chargé d'affaires, consul, or commercial agent, holding commission under the Government of the United States, or before any notary public; judge, or magistrate having an

1 official seal and authorized to administer oaths in the foreign
 2 country in which the applicant may be.)

3 . DRAWING.

4 The applicant shall file in addition thereto a drawing
 5 of said mark, or a facsimile thereof, or a block for printing
 6 the same, one or all, as prescribed by the Commissioner of
 7 Patents.

8 REGISTER OF ADDRESSES OF NONRESIDENTS.

9 The Secretary of the Treasury shall keep a register of
 10 names and addresses furnished to him by applicants not re-
 11 siding in the United States, to which papers or process
 12 relating to marks under this Act may be forwarded to such
 13 applicants; and he shall forthwith forward by mail to each
 14 applicant, at his last registered address, all papers or process
 15 served upon him in lieu of personal service upon such appli-
 16 cant pursuant to this Act.

17 PRIORITY UNDER CONVENTIONS.

18 SEC. 8. That a person entitled to the registration of a
 19 trade-mark under this Act who has applied for the registration
 20 of a trade-mark in any foreign country which by treaty or
 21 convention grants a similar right to citizens of the United
 22 States may file the application prescribed in the last section
 23 in the Patent Office of the United States as of the date of
 24 filing of his first application in such a foreign country, if four



1 months have not yet expired, and such filing shall have the
2 same force and effect as though made on said date. Proof of
3 such filing may be made by a certified copy thereof, or in
4 such other manner as may be required by the Commissioner
5 of Patents.

6 EXAMINATION OF APPLICATION—PUBLICATION OF MARK.

7 SEC. 9. That on the filing of such application and the
8 payment of the fees required by law, the Commissioner of
9 Patents shall cause the application to be examined by the
10 examiner in charge of trade-marks. If it appear on such
11 examination—

12 (a) That the applicant is one of the persons mentioned
13 in section five of this Act; and

14 (b) That the mark is entitled to registration as herein
15 provided.

16 If no notice of opposition to its registration be filed as
17 herein provided, the Commissioner shall cause the mark to
18 be published in the Official Gazette of the Patent Office.

19 At the expiration of thirty days from such publication,
20 unless notice of opposition shall previously have been given
21 as herein provided, the Commissioner shall register the mark
22 as a trade-mark and issue a certificate thereof in the following
23 form, to which shall be attached one of the duplicate copies
24 of the application filed in the Patent Office:



18 Each certificate shall bear date as of the day on which
19 the application was filed, or as of the day when the first

23 The trade-mark shall be registered for the term of ten
24 years, unless the applicant is a nonresident alien entitled to

21 prior to such filing in the United States.

22 DURATION OF REGISTRATION.

18 Each certificate shall bear date as of the day on which
19 the application was filed, or as of the day when the first
20 application was filed in a foreign country if within four months
21 prior to such filing in the United States.

13 Given under my hand at Washington, District of
14 Columbia.

17 DATE OF CERTIFICATE.

22 DURATION OF REGISTRATION.

23 The trade-mark shall be registered for the term of ten
24 years, unless the applicant is a nonresident alien entitled to
25 registration under this Act, in which case the trade-mark shall

1 be registered for the same term as in the country of origin if
 2 such term be less than ten years. The registration of a trade-
 3 mark to a nonresident alien shall immediately expire in case
 4 such registered mark shall be declared invalid or the registra-
 5 tion shall become void in the country of origin.

6 CERTIFICATE MAY ISSUE TO ASSIGNEE.

7 Certificate of registration may be granted to the
 8 assignee of the applicant if otherwise entitled to register the
 9 mark; but the assignment must first be entered of record in
 10 the Patent Office, and shall remain on file therein.

11 NOTICE OF REFUSAL OF REGISTRATION.

12 SEC. 10. That in case of refusal of the application for
 13 registration the Commissioner of Patents shall notify the appli-
 14 cant thereof, giving him, briefly, the reasons for such refusal.

15 NOTICE TO INTERESTED PARTIES—OPPOSITION TO
 16 REGISTRATION.

17 SEC. 11. That if it appear on the examination directed
 18 in section nine that a person other than the applicant, prior
 19 to such application—

20 First. Has registered and is still entitled to the right of
 21 a registrant in a mark; or,

22 Second. Has pending an application for registration of
 23 a mark; or, •

24 Third. Has previously used in commerce with foreign
 25 nations, among the several States, or with the Indian tribes



1 a mark to which, in the opinion of the examiner in charge of
 2 trade-marks, the mark for registration of which application is
 3 made has so near a resemblance as to be likely to cause con-
 4 fusion or mistake in the mind of the public or to deceive pur-
 5 chasers, the Commissioner shall give notice thereof before
 6 publication of the mark as prescribed in section nine to the
 7 prior applicant, registrant, or user, who may file in the Pat-
 8 ent Office notice of opposition, stating the grounds therefor,
 9 within thirty days thereafter, in default of which publication
 10 shall be made.

11 A person who would be damaged by the registration of
 12 a mark may oppose the same by filing notice of opposition,
 13 stating the grounds therefor, in the Patent Office within thirty
 14 days after the publication of the mark sought to be registered.

15 INTERFERENCE OR OPPOSITION—PROCEDURE.

16 SEC. 12. That in all cases where notice of opposition
 17 has been filed the Commissioner of Patents shall notify the
 18 applicant thereof and of the grounds therefor. He shall, in
 19 every case of interference between pending applications when
 20 demanded by either applicant, or of opposition to registration,
 21 direct the examiner in charge of trade-marks to proceed to
 22 determine the question of priority between applicants or of
 23 the sufficiency of objections to registration, in such manner
 24 and upon such notice to those interested as the Commissioner
 25 may by rules prescribe. The Commissioner may refuse to



1 register the mark against the registration of which objection
 2 is filed, or may refuse to register both of two interfering
 3 marks, or may register the mark as a trade-mark for the
 4 person first to adopt and use the mark if otherwise entitled to
 5 register the same, unless an appeal is taken from the decision
 6 by a party interested in the proceedings within such time,
 7 not less than twenty days, as the Commissioner may prescribe.

8 CANCELLATION OF REGISTRATION.

9 SEC. 13. That whenever a person enumerated in section
 10 five of this Act shall deem himself injured by the registration
 11 of a mark in the Patent Office he may apply to the Commis-
 12 sioner of Patents to cancel the registration of such mark. The
 13 Commissioner shall refer such application to the examiner in
 14 charge of trade-marks and give notice thereof to the regis-
 15 trant. If it appear after a hearing before the examiner that
 16 the mark is not used by the registrant or has been abandoned
 17 or was not entitled to registration, and the examiner shall so
 18 decide and no appeal be taken from his decision, the Commis-
 19 sioner shall cancel the registration.

20 APPEAL FROM EXAMINER OF TRADE-MARKS TO COMMIS-
 21 SIONER.

22 SEC. 14. That every applicant for the registration of a
 23 trade-mark, every registrant, every party to any interference,
 24 and every person who has filed notice of opposition or has
 25 applied to the Commissioner for the cancellation of the regis-



1 tration of a trade-mark may appeal from the decision of the
 2 examiner in charge of trade-marks to the Commissioner in
 3 person on payment of the fee prescribed herein and upon
 4 compliance with such rules as may be made by the Com-
 5 missioner.

6 APPEAL FROM COMMISSIONER TO COURT OF APPEALS,
 7 DISTRICT OF COLUMBIA.

8 SEC. 15. That if such party be dissatisfied with the de-
 9 cision of the Commissioner of Patents he may appeal to the
 10 court of appeals of the District of Columbia.

11 NOTICE OF APPEAL.

12 SEC. 16. That when an appeal is taken to the court of
 13 appeals of the District of Columbia, from the decision of the
 14 Commissioner of Patents, the appellant shall give notice
 15 thereof to the Commissioner and file in the Patent Office,
 16 within such time as the Commissioner shall appoint, his
 17 reasons of appeal specifically set forth in writing.

18 PROCEEDINGS UPON APPEAL.

19 SEC. 17. That the court shall, before hearing such appeal,
 20 give notice to the Commissioner of Patents of the time and
 21 place of the hearing, and on receiving such notice the Com-
 22 missioner shall give notice of such time and place in such
 23 manner as the court may prescribe to all parties who appear
 24 to be interested therein. The party appealing shall lay
 25 before the court certified copies of all the original papers and



1 evidence in the case, and the Commissioner shall furnish the
2 court with the grounds of his decision, fully set forth in writ-
3 ing, touching all the points involved by the reasons of
4 appeal.

5 DETERMINATION OF APPEAL AND ITS EFFECTS.

6 SEC. 18. That the court, on petition, shall hear and de-
7 termine such appeal and revise the decision appealed from in
8 a summary way, on the evidence produced before the Com-
9 missioner, at such early convenient time as the court may
10 appoint; and the revision shall be confined to the points set
11 forth in the reasons of appeal. After hearing the case the
12 court shall return to the Commissioner a certificate of its pro-
13 ceedings and decision, which shall be entered of record in the
14 Patent Office, and shall, unless reversed or modified as herein-
15 after provided, govern the further proceedings in the case.
16 But no opinion or decision of the court in any such case shall
17 preclude any person interested from the right to contest the
18 validity of the registration or of the trade-mark in any court
19 wherein the same may be called in question.

20 APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT
21 OF COLUMBIA TO THE SUPREME COURT OF THE
22 UNITED STATES.

23 SEC. 19. That a party to the proceeding who shall deem
24 himself aggrieved by the decision of the court of appeals of
25 the District of Columbia may appeal from such decision to



1 the Supreme Court of the United States. The court, upon
 2 petition, shall hear and determine such appeal and may re-
 3 examine and affirm, reverse, or modify the decision of the
 4 court of appeals of the District of Columbia. The proceed-
 5 ings upon appeal shall be governed by such rules as the higher
 6 court may prescribe. The provisions hereinbefore contained
 7 touching the certificate to be returned by the court of ap-
 8 peals of the District of Columbia to the Commissioner, and
 9 the recording of the same in the Patent Office, shall apply
 10 with like force and effect to the Supreme Court of the United
 11 States upon an appeal from the decision of the lower court.

12 REGISTRATION OBTAINABLE BY BILL IN EQUITY.

13 SEC. 20. That whenever registration on application is
 14 refused, either by the Commissioner of Patents or by the court
 15 of appeals of the District of Columbia upon appeal from the
 16 Commissioner, or by the Supreme Court of the United States
 17 upon appeal from the court of appeals of the District of Co-
 18 lumbia, the applicant may have remedy by will in equity,
 19 and the court having cognizance thereof, on notice to adverse
 20 parties and other due proceedings had, may adjudge that such
 21 applicant is entitled according to law to registration of the
 22 mark for which he has applied. If such adjudication be in
 23 favor of the applicant, the Commissioner shall register the
 24 mark upon the applicant filing in the Patent Office a copy of



1 the adjudication and otherwise complying with the require-
 2 ments of law. In all cases where there is no opposing party
 3 a copy of the bill shall be served on the Commissioner, and
 4 all the expenses of the proceeding shall be paid by the appli-
 5 cant, whether the final decision be in his favor or not.

6 RENEWAL OF REGISTRATION.

7 SEC. 21. That at any time within three months before
 8 the expiration of the registration of a trade-mark the Com-
 9 missioner of Patents shall register the same anew and issue
 10 a certificate thereof upon application in the form prescribed
 11 in section seven, and such registration shall be noticed in the
 12 Official Gazette of the Patent Office: Provided as follows:

13 First. The applicant shall pay into the Treasury of the
 14 United States the fees prescribed in this Act.

15 Second. The applicant, at the time of the application for
 16 the new registration, fulfills the conditions required as to the
 17 applicant and the trade-mark on an original registration
 18 under this Act.

19 Third. The trade-mark has not fallen into the public
 20 domain in the country of origin.

21 NEW APPLICATION FOR REGISTRATION OF MARK

22 ALREADY REGISTERED.

23 SEC. 22. That whenever a registration is defective or
 24 inoperative or invalid for any reason, the party in interest
 25 may, on the surrender of the original certificate, apply anew,

