

93^d CONGRESS
1ST SESSION

S. 1362

IN THE SENATE OF THE UNITED STATES

MARCH 26, 1973

Mr McCLELLAN (for himself and Mr SCOTT of Pennsylvania) 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 1973".

5 SEC 2. The title of the Act entitled "An Act to provide
6 for the registration and protection of trademarks used in
7 commerce, to carry out the provisions of certain interna-
8 tional conventions, and for other purposes", approved July
9 5, 1946 (60 Stat 427), is amended by inserting after

1 “commerce,” the words “to protect persons against unfair
2 competition”.

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

9 “(a) where an infringer is engaged solely in the
10 business of printing for others and establishes that he
11 was an innocent infringer, the owner of the right in-
12 fringed shall be entitled as against such infringer only
13 to an injunction against future printing.”.

14 SEC 4 Section 34 (15 U S C 1116) of said Act is
15 amended by deleting from the end of the first sentence
16 thereof “of the registrant of a mark registered in the Patent
17 Office” and substituting therefor “protected under this Act”,
18 and by inserting in the third paragraph after the word “pro-
19 ceeding” (first occurrence) the words “involving a regis-
20 tered trademark and”.

21 SEC 5 Section 35 (15 U S.C 1117) of said Act is
22 amended by deleting the first sentence thereof and substi-
23 tuting therefor “When a violation of any right protected
24 under this Act shall have been established in any civil action
25 arising under this Act, the plaintiff shall be entitled, subject

1 to the provisions of sections 29 and 32 and subject to the
2 principles of equity, to recover (1) defendant's profits, (2)
3 any damages sustained by the plaintiffs, and (3) the costs
4 of the action" and by inserting a new sentence as the last
5 sentence of said section to read "The court in exceptional
6 cases may award reasonable attorneys' fees to the prevail-
7 ing party."

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

16 SEC. 7. Section 43 (15 U.S.C. 1125) of said Act is
17 amended by deleting subsections (a) and (b) and substi-
18 tuting therefor:

19 "SEC 43 (a) Any person who shall engage in any
20 act, trade practice, or course of conduct, in commerce,
21 which—

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

1 or results or is likely to result in passing off the goods,
2 services, or vocational activities which he offers as or for
3 those of any other person: *Provided*, That, in cases aris-
4 ing under this subsection which involve the simulation of
5 the physical appearance of goods, unqualified injunctive
6 relief may be granted only if those features of appearance
7 which have been simulated are (i) substantially nonfunc-
8 tional, and (ii) serve to identify the source of such goods
9 and to distinguish them from those manufactured or sold
10 by others, or

11 “(2) by a false or misleading representation or
12 omission of material information. either (i) misrepre-
13 sents his goods, services, vocational activities, or their
14 geographic origin, or (ii) misrepresents or disparages
15 another person’s goods, services, vocational activities,
16 or their geographic origin, or

17 “(3) results or is likely to result in the disclosure
18 or appropriation of a trade secret or confidential infor-
19 mation as a consequence of a breach of trust, theft, tres-
20 pass or other tortious or unlawful conduct.

21 “(4) without being limited to or by the foregoing
22 subsections (1) through (3), otherwise constitutes
23 unfair competition by misrepresentation or misappropria-
24 tion,

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

1 “(b) The remedies provided in this Act shall be avail-
2 able to any person whose business or vocational activity, or
3 the goodwill thereof is or is likely to be damaged, to prevent
4 and to recover for the forms of unfair competition enumerated
5 in paragraph (a) hereof: *Provided*, That it shall not be nec-
6 essary to prove competition between the parties, actual con-
7 fusion, mistake, or deception, or, except where proof thereof
8 may be required by a court in awarding relief under section
9 35, intent to injure the business or vocational activity of any
10 other person or the goodwill thereof.

11 “(c) The relief provided for by this section shall be
12 in addition to and shall not affect those remedies otherwise
13 available under this Act, under the common law, or pursuant
14 to the statutes of any State or of the United States (including
15 patent and copyright statutes). Nothing in this section shall
16 be construed so as to preempt the jurisdiction of any State to
17 grant relief in cases of unfair competition.”

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

23 SEC. 9. The provided clause of section 46 (a) is amended
24 by deleting “in force on the effective date of this Act” and

1 inserting after "which does not relate to trademarks" the
2 phrase "or unfair competition,".

3 SEC. 10. Section 1338 (a) of title 28, United States
4 Code, the first sentence is amended by inserting ", unfair
5 competition" after "copyrights".

6 SEC. 11 Section 1338 (b) of title 28, United States
7 Code, is amended to read.

8 "(b) The district courts shall have original jurisdic-
9 tion of any civil action asserting a claim of unfair competi-
10 tion under the law of any State, when joined with a sub-
11 stantial and related claim under any Act of Congress relating
12 to patents, copyrights, unfair competition, or trademarks."

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

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