HR 1322

Calendar No. 1322

78TH CONGRESS SENATE REPORT2d Session No.1303

PROVIDING FOR THE REGISTRATION AND PROTECTION OF TRADE--MARKS USED IN COMMERCE, TO CARRY OUT THE PROVISIONS OF CERTAIN INTERNATIONAL CONVENTIONS DECEMBER 4 (legislative day, NOVEMBER 21), 1944.----Ordered to be printed

Mr. PEPPER, from the Committee on Patents, submitted the following

REPORT

[To accompany H. R. 82]

The Committee on Patents, to whom was referred the bill (H. R. 82) to provide for the registration and protection of trade--marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Page 5, line 1, strike out the word "goods" and insert "marks".

Page 16, line 2, following the period, add "This subsection shall not be subject to the provisions of section 13 of this Act".

Page 16, line 6, following the word "register" insert "or any Government agency which believes that the public interest will be adversely affected".

Page 16, line 10, after "registered", change the period to a comma and add "except that the fee and verification herein provided for shall not be required of any Government agency".

Page 16, line 22, after "fee" insert a comma and add "or any Government agency which believes that the public interest is or will be adversely affected may without the payment of fee,".

Page 21, line 10, following the period, add "The Commissioner of Patents shall not be a necessary party to an inter partes proceeding under Revised Statutes 4915, but he shall be notified of the filing of the bill by the clerk of the court in which it is filed and the Commissioner shall have the right to intervene in the action."

Page 23, lines 12, 13, and 14, strike out "be may at any time apply to the Commissioner to cancel such registration" and insert "or whenever any Government agency believes that the public interest is adversely affected petition to cancel such registration may be filed with the Commissioner at any time".

Page 24, line 8, after "42" add "(b)".Page 24, strike out lines 13, 14, and 15, and renumber all succeeding sections.

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Page 25, line 6, change the colon to a period and strike out "Provided, however," and all of lines 7 through 12.

Page 29, strike outlines 18 through 25 and on page 30 lines 1 through 5.
Page 31, after line 22, insert the following paragraph:
(a) That the mark whose use is charged as an infringement was registered and used prior to the publication under subsection (a) or (c) of section 12 of this Act of the registered mark of the registrant, and not abandoned: Provided, however, That this defense shall apply only where the said mark has been published pursuant to subsection (c) of section 12 and shall apply only for the area in which the mark was used prior to the date of publication of the registrant's mark under subsection (a) or (c) of section 12 of this Act.
Page 36, strike out lines 3 through 25; page 37, strike out lines 1 through 25; and page 38, strike out lines 1 through 19; and insert in lieu thereof the following:

SEC 42(a). The remedies provided in title VI of this Act shall be available against any person who imports into the United States, any article bearing, without the consent of the registrant, a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, or the Act of March 19, 1920, or on any register provided for by this Act, or bearing an infringement or such registered mark. Upon request, the Commissioner of Customs shall make available to any registrant the name and address of any importer of any article which is alleged in writing to bear any such registered mark or infringement thereof, and shall make available to any manufacturer or trader claiming the exclusive right to the use of a trade or commercial name in the United States, the name and address of any importer of any article which is alleged in writing to bear a trade of commercial name, or infringement thereof, in violation of the legal rights of said manufacturer or trader.
(b) After complaint of any registrant of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register provided for by this Act, articles of foreign origin bearing such registrant's mark or alleged infringement thereof shall be detained in customs custody upon the filing of the certificate of registration and of bond by such registrant conditioned to bold the importer harmless from loss or damage resulting from such detention in the event the use of the mark appearing on the imported articles is not finally held to violate the rights of the registrant: Provided. That any article so denied may be released from customs custody upon written consent of the registrant or upon the filing by the importer of a bond conditioned to hold the registrant harmless from loss or damage by reason of such release prior to final adjudication, in the event the use of the mark appearing on such articles is finally held to violate the rights of the registrant: Provided further, That no article shall be detained in customs custody under this subsection for a longer period than three months unless suit against the importer or ultimate consignee has been filed by the registrant.
(c) Whenever the use, in connection with a specified imported article or class of articles, of a registered mark or infringement thereof or of a trade name or infringement thereof has been enjoined by final judicial decree or order, such articles bearing such marks or names, or such infringements thereof, imported by any person, shall be excluded, during the effectiveness of the decree or order, from entry as any customs port where a certified copy of such decree or order is on file, unless the written consent of the registrant or manufacturer or trader to the entry, is furnished. Certified copies of any such decree or order may be filed with the collector of customs at any port of entry in the United States.

No articles of United States origin shall be excluded from entry unless specifically directed in the judicial decree or order.
(d) No article shall be detained or excluded from entry under subsection (b) or (c) which is imported for the personal or household use of the ultimate consignee thereof as a gift or otherwise, and is not intended for sale.
(e) Any owner, importer, or consignee of articles detained under subsection (b) or refused entry under subsection (c) may have relief against the registrant, manufacturer, or trader by a proceeding in any United States district court in the district where the goods are held or where such registrant, manufacturer, or trader is an inhabitant or may be found, for a declaratory judgment to determine whether the use of the mark or name on the imported articles violates the rights of the registrant, manufacturer, or trader. The filing of a complaint under subsection

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(b) or of an order or decree under subsection (c) shall be ineffective unless the registrant, manufacturer, or trader also files a power of attorney authorizing the collector of customs to accept process in any suit brought under this subsection.
(f) Any articles excluded from entry by virtue of subsection (c) shall, if not exported or destroyed within a reasonable time, be seized and disposed of by the customs authorities in the manner prescribed for the seizure and disposal of merchandise imported in violation of the customs laws, but no such articles shall be sold within the United States, except for exportation, unless the offending name or mark is removed therefrom.
(g) The consent to the entry of articles as provided for in subsections (b) or (c) shall not be considered to impair proceedings in the public interest by any agency of the Government.
(h) No imported article shall be detained or excluded from entry under subsection (b) or (c) if the complained of or offending mark or name is obliterated or removed.
(i) Any imported article subject to the provisions of this section may be exported at any time, but such exportation shall not abate or impair any judicial proceeding provided for herein.
(j) The Secretary of the Treasury is authorized to make such regulations as may be necessary to carry out the functions of the Customs Service under the provisions of this Act.

Page 41, line 10, strike out "perfected" and insert "granted".
Page 41, lines 11, 12, and 13, strike out "when such country makes the same requirement of nationals or residents of
the United States."
Page 41, strike out lines 14 through 18 and insert in lieu thereof--
for the purposes of this section, the country of origin of the applicant is the country in which he has a bona fide and effective industrial or commercial establishment, the country in which he is domiciled, or if he has not a domicile in any of the countries described in paragraph (b) of this section, the country of which he is a national.
Page 42, line 15, strike out "foreign applicant" and insert "owner of a registration granted under this section", and in the same line, strike out "infringement of his mark" and insert "acts committed".

Page 43, line 14, strike out "against" and insert "for" and in the same line, strike out the word "trade". Report No. 603 of the House of Representatives, Seventy--eigth Congress, first session, beginning with the section entitled "The Statutes" on page 2, and continuing through page 17, is adopted and made a part of this report.
[SEE H.R. 603]

79th Congress.

1st Session IN THE HOUSE OF REPRESENTATIVES JANUARY 22, 1945

Mr. LANHAM introduced the following bill; which was referred to the Committee on Patents

A BILL
To provide for the registration and protection of trade--marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.