Act of 1870

SEC. 77. And be it further enacted, That any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any States or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which by treaty or convention affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade--mark or who intend to adopt and use any trade--mark for exclusive use within the United States, may obtain protection for such lawful trade--mark by complying with the following requirements, to wit:--

First. By causing to be recorded in the patent office the names of the parties and their residences and place of business, who desire the protection of the trade--mark.

Second. The class of merchandise and the particular description of goods comprised in such class, by which the trade--mark has been or is intended to be appropriated.

Third. A description of the trade--mark itself, with fac--similes thereof, and the mode in which it has been or is intended to be applied and used.

Fourth. The length of time, if any, during which the trade--mark has been used.

Fifth. The payment of a fee of twenty--five dollars, in the same manner and for the same purpose as the fee required for patents.

Sixth. The compliance with such regulations as may be prescribed by the commissioner of patents.

Seventh. The filing of a declaration, under the oath of the person, or of some member of the firm or officer of the corporation, to the effect that the party claiming protection for the trade--mark has a right to the use of the same, and that no other person, firm, or corporation has the right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive, and that the description and facsimiles presented for record are true copies of the trade--mark sought to be protected.

SEC. 78. And be it further enacted, That such trade--mark shall remain in force for thirty years from the date of such registration, except in cases where such trade--mark is claimed for and applied to articles not manufactured in this country and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this act at the same time that it becomes of no effect elsewhere, and during the period that it remains in force it shall entitle the person, firm, or corporation registering the same to the exclusive use thereof so far as regards the description of goods to which it is appropriate in the statement filed under oath as aforesaid, and no other person shall lawfully use the same trade--mark, or substantially the same, or so nearly resembling it as to be calculated to deceive, upon substantially the same description of goods: Provided, That six months

prior to the expiration of said term of thirty years, application may be made for a renewal of such registration, under regulations to be prescribed by the commissioner of patents, and the fee for such renewal shall be the same as for the original registration; certificate of such renewal shall be issued in the same manner as for the original registration, and such trade--mark shall remain in force for a further term of thirty years: And provided further, That nothing in this section shall be construed by any court as abridging or in any manner affecting unfavorably the claim of any person, firm, corporation, or company to any trade--mark after the expiration of the term for which such trade--mark was registered.

SEC. 79. And be it further enacted, That any person or corporation who shall reproduce, counterfeit, copy, or imitate any such recorded trade--mark, and affix the same to goods of substantially the same descriptive properties and qualities as those referred to in the registration, shall be liable to an action in the case for damages for such wrongful use of said trade--mark, at the suit of the owner thereof, in any court of competent jurisdiction in the United States, and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wringful use of his trade--mark and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful use. The commissioner of patents shall not receive and record any proposed trade--mark which is not and cannot become a lawful trade--mark, or which is merely the name of a person, firm, or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trade--mark appropriate to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last--mentioned trade--mark as to be likely to deceive the public: Provided, That this section shall not prevent the registry of any lawful trade--mark rightful used at the time of the passage of this act.

SEC. 80. And be it further enacted, That the time of the receipt of any trade--mark at the patent office for registration shall be noted and recorded, and copies of the trade--mark and of the date of the receipt thereof, and of the statement filed therewith, under the seal of the patent office, certified by the commissioner, shall be evidence in any suit in which such trade--mark shall be brought into controversy.

SEC. 81. And be it further enacted, That the commissioner of patents is authorized to make rules, regulations, and prescribe forms for the transfer of the right to the use of such trade--marks, conforming as nearly as practicable to the requirements of law respecting the transfer and transmission of copyrights.

SEC. 82. And be it further enacted, That any person who shall procure the registry of any trade--mark, or of himself as the owner thereof, or an entry respecting a trade--mark in the patent office under this act, by making any false of fraudulent representations or declarations, verbally or in writing, or by any fraudulent means, shall be liable to pay damages in consequence of any such registry or entry to the person injured thereby, to be recovered in an action on the case before any court of competent jurisdiction within the United States.

SEC. 83. And be it further enacted, That nothing in this act shall prevent, lessen, impeach, or avoid any remedy at law or in equity, which any party aggrieved by any wrongful use of any trade--mark might have had if this act had not been passed.

SEC. 84. And be it further enacted, That no action shall be maintained under the provisions of this act by any person claiming the exclusive right to any trade--mark which is used or claimed in any unlawful business, or upon any article which is injurious in itself, or upon any trade--mark which has been fraudulently obtained, or which has been formed and used with the design of deceiving the public in the purchase or use of any article of merchandise.