Act of March 3, 1881

AN ACT To authorize the registration of trade--marks and protect the same

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That owners of trade--marks used in commerce with foreign nations, or with the Indian tribes, provided such owners shall be domiciled in the United States, or located in any foreign country or tribes which by treaty, convention, or law, affords similar privileges to citizens of the United States, may obtain registration of such trade--marks by complying with the following requirements:

First. By causing to be recorded in the Patent Office a statement specifying name, domicile, location, and citizenship of the party applying; the class of merchandise and the particular description of goods comprised in such class to which the particular trade--mark has been appropriated; a description of the trade--mark itself, with facsimiles thereof, and a statement of the mode in which the same is applied and affixed to goods; and the length of time during which the trade--mark has been used.

Second. By paying into the Treasury of the United States the sum of twenty--five dollars, and complying with such regulations as may be prescribed by the Commissioner of Patents.

SEC. 2. That the application prescribed in the foregoing section must, in order to create any right whatever in favor of the party filling it, be accompanied by a written declaration verified by the person, or by a member of a firm, or by an officer of a corporation applying, to the effect that such party has at the time a right to the use of the trade--mark sought to be registered and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that such trade--mark is used in commerce with foreign nations or Indian tribes, as above indicated; and that the description and facsimiles presented for registry truly represent the trade--mark sought to be registered.

SEC. 3. That the time of the receipt of any such application shall be noted and recorded. But no alleged trade--mark shall be registered unless the same appear to be lawfully used as such by the applicant in foreign commerce or commerce with Indian tribes as above mentioned or is within the provision of a treaty, convention, or declaration with a foreign power, no which is merely the name of the applicant; nor which is identical with a registered or known trade--mark owned by another and appropriate to the same class of merchandise, or which so nearly resembles some other person's lawful trade--mark as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers. In an application for registration the Commissioner of Patents shall decide the presumptive lawfulness of claim to the alleged trade--mark; and in any dispute between an applicant and previous registrant, or between applicants he shall follow, as far as the same may be applicable, the practice of courts of equity of the United States in analogous cases.

SEC. 4. That certificates of registry of trade--marks shall be issued in the name of the United States of America, under the seal of the Department of the Interior, and shall be signed by the Commissioner of Patents, and a record thereof, together with printed copies of the specifications, shall be kept in books for that purpose. Copies of trade--marks and of statements and declarations filed therewith and certificates of registry so signed and sealed shall be evidence in any suit in which such trade--marks shall be brought in controversy.

SEC. 5. That a certificate of registry shall remain in force for thirty years from its date; except in cases where the trade--mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of a 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 time that such trade--mark ceases to be exclusive property elsewhere. At any time during the six months prior to the expiration of the term of thirty years such registration may be renewed on the same terms, and for a like period.

SEC. 6. That applicants for registration under this act shall be credited for any fee, or part of a fee, here--tofore paid into the Treasury of the United States with intent to procure protection for the same trade--mark.

SEC. 7. That registration of a trade--mark shall be prima facie evidence of ownership. Any person who shall reproduce, counterfeit, copy, or colorably imitate any trade--mark registered under this act, and affix the same to merchandise of substantially the same descriptive properties as those described in the registration, shall be liable to an action on the cases for damages for the wrongful use of said trade--mark, at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of such trade--mark used in foreign commerce or commerce with Indian tribes, as aforesaid, and to cover compensation thereof in any court having jurisdiction over the person guilty of such wrongful act; and courts of the United States shall have original and appellate jurisdiction in such cases without regard to the amount in controversy.

SEC. 8. That no action or suit shall be maintained under the provisions of this act in any case when the trade--mark is used in any unlawful business, or upon any article injurious in itself, or which mark has been used with the design of deceiving the public in the purchase of merchandise, or under any certificate of registry fraudulently obtained.

SEC. 9. That any person who shall procure the registry of a trade--mark, or of himself as the owner of a trade--mark or an entry respecting a trade--mark, in the office of the Commissioner of Patents, by a false fraudulent representation or declaration, orally, or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence thereof to the injured party, to be recovered in an action on the case.

SEC. 10. 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 the provisions of this act had not been passed.

SEC. 11. That nothing in this act shall be construed as unfavorably affecting a claim to a trade--mark after the term of registration shall have expired; nor to give cognizance to any court of the United States in an action or suit between citizens of the same State, unless the trade--mark in controversy is used on goods intended to be transported to a foreign country, or in lawful commercial intercourse with an Indian tribe.

SEC. 12. That the Commissioner of Patents is authorized to make rules and regulations and prescribe forms for the transfer of the right to use trade--marks and for recording such transfers in his office.

SEC. 13. That citizens and residents of this country wishing the protection of trade--marks in any foreign country the laws of which require registration here as a condition precedent to getting such protection there, may register their trade--marks for that purpose as is above allowed to foreigners and have certificate thereof from the Patent Office.