Act of February 20, 1905, as amended

AN ACT To authorize the registration of trade----marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same.

U.S.C., title 15, sec. 81.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the owner of a trade--mark used in commerce with foreign nations, or among the several States, or with Indian tribes, a provided such owner shall be domiciled within the territory of the United States, or resides in or is located in any foreign country which by treaty, convention, or law, affords similar privileges to the citizens of the United States, may obtain registration for such trade----mark by complying with the following requirements. First, by filing in the Patent Office an application therefor, in writing, addressed to the Commissioner of Patents, signed by the applicant, specifying his name, domicile, location, and citizenship; the class of merchandise and the particular description of goods comprised in such class to which the trade----mark is appropriated; 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; a description of the trade----mark itself shall be included, if desired by the applicant or required by the commissioner, provided such description is of a character to meet the approval of the commissioner. With this statement shall be filed a drawing of the trade--mark, signed by the applicant, oapplicant, of his attorney, and such number of specimens of the trade----mark as actually used as may be required by the Commissioner of Patents. Second, by paying into the Treasury of the United States the sum of fifteen dollars, and otherwise complying with the requirements of this act and such regulations as may be prescribed by the Commissioner of Patents.

By similar procedure, any natural or juristic person, including nations, States, municipalities and the like, which exercises legitimate control over the use of a collective mark, may apply for and obtain registration of such mark.

SEC. 2. U.S.C., title 15, sec. 82. That the application prescribed in the foregoing section, in order to create any right whatever in favor of the party filing it, must be accompanied by a written declaration verified by the applicant, or by a member of the firm or an officer of the corporation or association applying, to the effect that the applicant believes himself or the firm, corporation, or association in whose behalf he makes the application to be the owner of the trade-- mark sought to be registered, and that no other person, firm, corporation, or association, to the best of the applicant's knowledge and belief, has the right to use such trade----mark in the United States, either in the identical form or in such near resemblance thereto as might be calculated to deceive; that such trade----mark is used in commerce among the several States, or with foreign nations, or with Indian tribes, and that the description and drawing presented truly represent the trade----mark sought to be registered. If the applicant resides or is located in a foreign country, the statement required shall, in addition to the foregoing, set forth that the trade----mark has been registered by the applicant, or that an application for the registration thereof has been filed by him in the foreign country in which he resides or is located, and shall give the

date of such registration, or the application therefor, as the case may be except that in the application in such cases it shall not be necessary to state that the mark has been used in commerce with the United States or among the States thereof. The verification required by this section may be made before any person within the United States authorized by laws to administer oaths, or, when the applicant resides in a foreign country, before any minister, charge 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 official seal and authorized to administer oaths in the foreign country in which the applicant may be whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States.

SEC. 3. U.S.C., title 15, sec. 83. That every applicant for registration of a trade--mark, or for renewal of registration of a trade--mark, who is not domiciled within the United States, shall, before the issuance of the certificate of registration, as hereinafter provided for, designate, by a notice in writing, filed in the Patent Office, some person residing within the United States on whom process or notice of proceedings affecting the right of ownership of the trade--mark of which such applicant may claim to be the owner, brought under the provisions of this act or under other laws of the United States, may be served, with the same force and effect as if served upon the applicant or registrant in person. For the purposes of this act it shall be deemed sufficient to serve such notice upon such applicant, registrant, or representative by leaving a copy of such process or notice addressed to him at the last address of which the Commissioner of Patents has been notified.

SEC. 4. U.S.C., title 15, sec. 84. That an application for registration of a trade--mark filed in this country by any person who has previously regularly filed in any foreign country which, by treaty, convention, or law, affords similar privilege to citizens of the United States an application for registration of the same trade--mark shall be accorded the same force and effect as would be accorded to the same application if filed in this country on the date on which application for registration of the same trade--mark was first filed in such foreign country: Provided, That such application is filed in this country within six months from the date on which the application was first filed in such foreign country: And provided further, That certificate of registration of which application has been filed by an applicant located in a foreign country until such mark has been actually registered by the applicant in the country in which he is located.

SEC. 5. U.S.C, title 15, sec. 85. That no mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade--mark on account of the nature of such mark unless such mark--
(a) Consists of or comprises immoral or scandalous matter.
(b) Consists of or comprises the flag or coast of arms or other insignia of the United States or any simulation thereof, or of any State or municipality or of any foreign nation, or of any design or picture that has been or may hereafter be adopted by any fraternal society as its emblem, or of any name, distinguishing mark, character, emblem, colors, flag, or banner adopted by any institution, organization, club, or society which was

incorporated in any State in the United States prior to the date of the adoption and use by the applicant: Provided, That said name, distinguishing mark, character,

emblem, colors, flag, or banner was adopted and publicly used by said institution, organization, club or society prior to the date of adoption and use by the applicant: Provided, That trade--marks which are identical with a registered or known trade--mark owned and in use by another and appropriated to merchandise of the same descriptive properties, or which so nearly resemble a registered or known trade--mark owned and in use by another and appropriated to merchandise of the same descriptive properties as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers shall not be registered: Provided, That no mark which consists merely in the name of an individual, firm, corporation, or association not written, printed, impressed, or woven in some particular or distinctive manner, or in association with a portrait of the individual, or merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, or merely a geographical name or term, shall be registered under the terms of this Act: Provided further, That not portrait of a living individual may be registered as a trade--mark except by the consent of such individual, evidenced by an instrument in writing, nor may the portrait of any deceased President of the United States be registered during the life of his window, if any, except by the consent of the widow evidenced in such manner: And provided further, that nothing shall prevent the registration of any mark used by the applicant or his predecessors, or by those from whom title to the mark is derived, in commerce with foreign nations or among the several States or with Indian tribes which was in actual and exclusive use as a trade--mark of the applicant, or his predecessors from whom he derived title, for ten years next preceding February twentieth, nineteen hundred and five: Provided further That nothing herein shall prevent the registration of a trade--mark otherwise registerable because of its being the name of the applicant or a portion thereof. And if any person or corporation shall have so registered a mark upon the ground of said use for ten years preceding February 20, 1905, as to certain articles or classes of articles to which said mark shall have been applied for said period, and shall have thereafter and subsequently extended his business so as to include other articles not manufactured by said have thereafter and subsequently extended his business so as to include other articles not manufactured by said applicant for ten years next preceding February 20, 1905, nothing herein shall prevent the registration of said trade--mark in the additional classes to which said new additional articles manufactured by said person or corporation shall apply, after said trade--mark has been used on said article in interstate or foreign commerce or with the Indian tribes for at least one year provided another person or corporation has not adopted and used previously to its adoption and use by the proposed registrant, and for more than one year such trade--mark or one so similar as to be likely to deceive in such additional class or classes.

SEC. 6. U.S.C., title 15, sec. 86. That on the filing of an application for registration of a trade--mark which complies with the requirements of this act, and the payment of the fees herein provided for, the Commissioner of Patents shall cause an examination thereof to be made; and if on such examination it shall appear that the applicant is entitled to have his trade--mark registered under the provisions of this act, the commissioner shall cause

the mark to be published at least once in the Offical Gazette of the Patent Office. Any person who believes he would be damaged by the registration of a mark may oppose the same by filing notice of opposition, stating the grounds therefor, in the Patent Office within thirty days after the publication of the mark sought to be registered, which said notice of opposition shall be verified by the person filing the same before one of the officers mentioned in section two of this act. An opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless verified by the opposer within a reasonable time after such filing. If no notice of opposition is field within said time, the commissioner shall issue a certificate of registration therefor, as hereinafter provided for. If on examination an application is refused, the commissioner shall notify the applicant giving him his reasons therefor.

SEC. 7. U.S.C., title 15, sec 87. That in all cases where notice of opposition has been filed the Commissioner of Patents shall notify the applicant thereof and the grounds therefor.
Whenever application is made for the registration of a trade--mark which is substantially identical with a trade--mark appropriated to goods of the same descriptive properties, for which a certificate of registrant has been previously issued to another, or for registration of which another has previously made application, or which so nearly resembles such trade--mark, or a known trade--mark owned and used by another, as, in the opinion of the commissioner, to be likely to be mistaken therefor by the public, he may declare that an interference exists as to such trade--mark, and in every case of interference or opposition to registration he shall direct the examiner in charge of interferences to determine the question of the right of registration to such trade--mark, and of the sufficiency of objections to registration, in such manner and upon such notice to those interested as the commissioner may by rules prescribe.
The commissioner may refuse to register the mark against the registration of which objection is filed, or may refuse to register both of two interfering marks, or may register the mark, as a trade--mark, for the person first to adopt and use the mark, if otherwise entitled to register the same, unless an appeal is taken, as hereinafter provided for, from his decision, by a party interested in the proceeding, within such time (not less than twenty days) as the commissioner may prescribe.

SEC. 8. U.S.C., title 15, sec. 88. That every applicant for the registration of a trade--mark, or for the renewal of the registration of a trade--mark, which application is refused, or a party to an interference against whom a decision has been rendered, or a party who has filed a notice of opposition as to a trade--mark, may appeal from the decision of the examiner in charge of trade--marks, or the examiner in charge of interferences, as the case may be, to the commissioner in person, having once paid the fee for such appeal.

SEC. 9. U.S.C., title 15, sec. 89. That if an applicant for registration of a trade--mark, or a party to an interference as to a trade--mark, or a party who has filed opposition to the registration of a trade--mark, or party to an application for the cancelation of the registration of a trade--mark, is dissatisfied with the decision of the Commissioner of Patents, he may appeal to the United States Court of Customs and Patent Appeals, on complying with the conditions required in case of an appeal from the decision of the

commissioner by an applicant for patent, or a party to an interference as to an invention, and the same rules of practice and procedure shall govern in every stage of such proceedings, as far as the same may be applicable.

SEC. 10. U.S.C., title 15, sec. 90. That every registered trade--mark and every mark for the registration of which application has been made, together with the application for registration of the same, shall be assignable in connection with the goodwill of the business in which the mark is used. Such assignment must be by an instrument in writing and duly acknowledge according to the laws of the country or State in which the same is executed; any such assignment shall be void as against any subsequent purchaser for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from date thereof. The commissioner shall keep a record of such assignments.

SEC. 11. U.S.C., title 1, sec. 91. That certificates of registration of trademarks shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall either be signed by the Commissioner of Patents or have his name printed thereon and attested by an Assistant Commissioner of Patents or by one of the law examiners duly designated by the Commissioner of Patents, and a record thereof, together with printed copies of the drawing and statement of the applicant, shall be kept in books for that purpose. The certificate shall state the date on which the application for registration was received in the Patent Office. Certificates of registration of trade--marks may be issued to the assignee of the applicant, but the assignment must first be entered to record in the Patent Office.

SEC. 12. U.S.C., TITLE 15, SEC. 92. That a certificate of registration shall remain in force for twenty years, except that in the case of trade--marks previously registered in a foreign country such certificates shall cease to be in force on the day on which the trade--mark ceases to be protected in such foreign country and shall in no case remain in force more than twenty years unless renewed. Certificates of registration may be, from time to time, renewed for like periods on payment of the renewal fees required by this act, upon request by the registrant, his legal representatives, or transferees of record in the Patent Office, and such request may be made at any time not more than six months prior to the expiration of the period for which the certificates of registration were issued, or renewed. Certificates of registration in force at the date at which this act takes effect shall remain in force for the period for which they were issued, but shall be renewable on the same conditions and for the same periods as certificates issued under the provisions of this act, and when so renewed shall have the same force and effect as certificates issued under this act.

SEC. 13. U.S.C., title 15, sec. 93. That whenever any person shall deem himself injured by the registration of a trade--mark in the Patent Office he may at any time apply to the Commissioner of Patens to cancel the registration thereof. The commissioner shall refer such application to the examiner in charge of interferences, who is empowered to hear and determine this question and who shall give notice thereof to the registrant. If it appear after a hearing before the examiner that the registrant was not entitled to the use of the

mark at the date of his application for registration thereof, or that the mark is not used by the registration, or has been abandoned, and the examiner shall so decide, the commissioner shall cancel the registration. Appeal may be taken to the commissioner in person from the decision of the examiner of interferences.

SEC. 14. U.S.C., title 15, sec. 94. That the following shall be the rates for trade--mark fees: On filing each original application for registration of a trade--mark, fifteen dollars: Provided, That an application for registration of a trade--mark pending at the date of the passage of this act, and on which certificate of registration shall not have issued at such date, may, at the option of the applicant, be proceeded with and registered under the provisions of this act without the payment of further fee.
On filing each application for renewal of the registration of a trade--mark, fifteen dollars.
On filing notice of opposition to the registration of a trade--mark, ten dollars.
On an appeal from the examiner in charge of trade--mark to the Commissioner of Patents, fifteen dollars.
On an appeal from the decision of the examiner in charge of interferences, awarding ownership of a trade--mark or canceling the registration of a trade--mark to the Commissioner of Patents, fifteen dollars.
For certified and uncertified copies of certificates of registration and other papers, and for recording transfers and other papers, the same fees as required by law for such copies of patents and for recording assignments and other papers relating to patents.

SEC. 15. U.S.C., title 15, sec. 95. That sections forty--nine hundred and thirty--five and forty--nine hundred and thirty--six of the Revised Statutes, relating to the payment of patent fees and to the repayment of fees paid by mistake, are hereby made applicable to trade--mark fees.

SEC. 16. U.S.C., title 15, sec. 96. That the registration of a trade--mark under the provisions of this act shall be prima facie evidence of ownership. Any person who shall, without the consent of the owner thereof. reproduce, counterfeit, copy, or colorably imitate any such trade--mark and affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration, or to labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registration, and shall use, or shall have used, such reproduction, counterfeit, copy, or colorable limitation in commerce among the several States, or with a foreign nation, or with the Indian tribes, shall be liable to an action for damages therefor at the suit of the owner thereof; and whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment therein for any sum above the amount found by the verdict as the actual damages, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs.

SEC. 17. U.S.C., title 15, sec. 97. That the district and territorial courts of the United States and the District Court of the United States for the District of Columbia shall have original jurisdiction, and the circuit courts of appeal of the United States and the United States Court of Appeals for the District of Columbia shall have appellate jurisdiction of

all suits at law or in equity respecting trade--marks registered in accordance with the provisions of this act, arising under the present act, without regard to the amount in controversy.

SEC. 18. U.S.C., title 15, sec. 98. That writs of certiorari may be granted by the Supreme Court of the United States for the review of cases arising under this act in the same manner as provided for patent cases by the act creating the circuit court of appeals.

SEC. 19. U.S.C., title 15, sec. 99. That the several courts vested with jurisdiction of cases arising under the present act shall have power to grant injunctions, according the course and principles of equity, to prevent the violation of any right of the owner of a trade--mark registered under this act, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for wrongful use of a trade--mark the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction. The court shall have the same power to increase such damages, in its discretion, as is given by section sixteen of this act for increasing damages found by verdict in actions of law; and in assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost which are claimed.

SEC. 20. U.S.C., title 15, sec. 100. That in any case involving the right to a trade--mark registered in accordance with the provisions of this act, in which the verdict has been found for the plaintiff, or an injunction issued, the court may order that all labels, signs, prints, packages, wrappers, or receptacles in the possession of the defendant, bearing the trade--mark of the plaintiff or complainant, or any reproduction, counterfeit, copy, or colorable imitation thereof, shall be delivered up and destroyed. Any injunction that may be granted upon hearing, after notice to the defendant, to prevent the violation of any right of the owner of a trade--mark registered in accordance with the provisions of this act, by any circuit court of the United States, or by a judge thereof, may be served on the parties against whom such injunction may be granted anywhere in the United States where they may be found, and shall be operative, and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other circuit court, or judge thereof, in the United States, or by the District Court of the United States for the District of Columbia, or a judge thereof. The said courts, or judges thereof, shall have jurisdiction to enforce said injunction, as herein provided, as fully as if the injunction has been granted by the circuit court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall, when required to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all the papers on which the said injunction was granted that are on file in his office.

SEC. 21. U.S.C., title 14, sec. 101. That no action or suit shall be maintained under the provisions of this act in any case when the trade--mark is used in 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 has been abandoned, or upon any certificate of registration fraudulently obtained.

SEC 22. U.S.C., title 15, sec. 102. That whenever there are interfering registered trade--marks, any person interested in any one of them may have relief against the interfering registrant, and all persons interested under him, by suit in equity against the said registrant; and the court, of notice to adverse parties and other due proceedings had according to the course of equity, may adjudge and declare either of the registrations void in whole or in part according to the interest of the parties in the trade--mark, and may order the certificate of registration to be delivered up to the Commissioner of Patents for cancellation.

SEC. 23. U.S.C., title 15, sec. 103. 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. 24. That all applications for registration pending in the office of the Commissioner of Patents at the time of passage of this Act, may be amended with a view to bringing them, and the certificate issued upon such applications, under its provisions, and the prosecution of such applications may be proceeded with under the provisions of this Act.

SEC. 25. U.S.C., title 104, sec. 104. That any person who shall procure registration of a trade--mark, or entry thereof, in the office of the Commissioner of Patents by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable to pay any damages sustained in consequence thereof to the injured party, to be recovered by an action on the case.

SEC. 26. U.S.C., title 15, sec. 105. That the Commissioner of Patents is authorized to make rules and regulations, not inconsistent with law, for the conduct of proceedings in reference to the registration of trade--marks provided for by this act.

SEC. 27. U.S.C., title 15, sec. 106. That no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade--mark registered in accordance with the provisions of this act or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade--marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration

of his trade--mark, issued in accordance with the provisions of this act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade--mark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

SEC. 28. U.S.C., title 15, sec. 107. That it shall be the duty of the registrant to give notice to the public that a trade--mark is registered, either by affixing thereon the words "Registered in U.S. Patent Office," or abbreviated thus, "Reg. U.S. Pat. Off.," or when, from the character or size of the trade--mark, or from its manner of attachment to the article to which it is appropriated, this cannot be done, then by affixing a label containing a like notice to the package or receptacle wherein the article or articles are inclosed: and in any suit for infringement by a party failing so to give notice of registration no damages shall be recovered, except on proof that the defendant was duly notified of infringement and continued the same after such notice.

SEC. 29. U.S.C., title 15, sec. 108. In construing this act the following rules must be observed, except where the contrary intent is plainly apparent from the context thereof: The United States includes and embraces all territory which is under the jurisdiction and control of the United States. The word "States" includes and embraces the District of Columbia the Territories of the United States and such other territory as shall be under the jurisdiction and control of the United States. The terms "person" and "owner," and any other word or term used to designate the applicant or other entitled to a benefit or privilege or rendered liable under the provisions of this act, include a firm, corporation, or association as well as a natural person. The term "juristic person" includes a firm, corporation, association, or similar organization capable of suing and being sued in a court of law. The terms "applicant" and "registrant" embrace the successors and assigns of such applicant or registrant. The term "trade--mark" includes any mark which is entitled to registration under the terms of this act, and whether registered or not, and a trade--mark shall be deemed to be "affixed" to an article when it is placed in any manner in or upon either the article itself or the receptacle or package or upon the envelope or other thing in, by, or with which the goods are packed or enclosed or otherwise prepared for sale or distribution.

SEC. 30. That this act shall be in force and take effect April first, nineteen hundred and five. All acts and parts of acts inconsistent with this act are hereby repealed except so far as the same may apply to certificates of registration issued under the act of Congress approved March third, eighteen hundred and eighty--one, en--titled "An act to authorize the registration of trade--marks and protect the same," or under the act approved August fifth, eighteen hundred and eighty--two, entitled "An act relating to the registration of trade--marks."