Act of March 19, 1920, as amended

ACT TO give effect to certain provisions of the convention for the protection of trade--marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Patents shall keep a register of (a) all marks communicated to him by the international bureaus provided for by the convention for the protection of trade--marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, in connection with which the fee of $50 gold for the international registration established by article 2 of that convention has been paid, which register shall show a facsimile of the mark; the name and residence of the registrant; the number, date, and place of the first registration the mark, including the date on which application for such registration was filed and the term of such registration, a list of goods to which the mark is applied as shown by the registration in the country of origin, and such other data as may be useful concerning the mark.
(b) All other marks not registrable under the act of February 20, 1905, as amended, except those specified in paragraphs (a) and (b) of section 5 of that act, including collective marks of natural or juristic persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the trade--mark sought to be registered even though not possessing an industrial or commercial establishment, which have been in bona fide use for not less than one year in interstate or foreign commerce, or commerce with the Indian tribes by the proprietor thereof, upon or in connection with any goods of such proprietor upon which a fee of $15 has been paid to the Commissioner of Patents and such formalities as required by the said Commissioner have been complied with: Provided, That trade--marks which are identical with a known trade--mark owned and used in interstate and foreign commerce, or commerce with the Indian tribes, by another and appropriated to merchandise of the same descriptive properties or which so nearly resemble a known trade--mark owned and used in interstate and foreign commerce or commerce with the Indian tribes 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 placed on this register.

SEC. 2. That whenever any person shall deem himself injured by the inclusion of a trade--mark on this register, he may at any time apply to the Commissioner of Patents 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 exclusive use of the mark at or since the date of his application for registration thereof, or that the mark is not used by the registrants 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 in charge of interferences.

SEC. 3. That any person who shall willfully and with intent to deceive, affix, apply, or annex, or use in connection with any article or articles of merchandise, or any container or containers of the same, a false designation of origin, including words or other symbols, tending to falsely identify the origin of the merchandise, and shall then cause such merchandise to enter into interstate or foreign commerce, and any person who shall knowingly cause or procure the same to be transported in interstate or foreign commerce or commerce with Indian tribes, or shall knowingly deliver the same to any carrier to be so transported shall be liable to an action at law for damages and to an action in equity for an injunction, at the suit of any person, firm, or corporation doing business in the locality falsely indicated as that of origin, or in the region in which said locality is situated, or at the suit of any association of such persons, firms, or corporations.

SEC. 4. That any person who shall without the consent of the owner thereof reproduce, counterfeit, copy, or colorably imitate any trade--mark on the register provided by this Act, and shall 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 imitation 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. 5. That it shall be the duty of a registrant under this Act of a mark falling within class (a) of section 1, to comply with the law of the country in which his original registration took place, in respect to giving notice to the public that the trade--mark is registered, in connection with the use of such trade--mark in the United States of America, and in any suit for infringement by a party failing to do this, no damages shall be recovered except on proof that the defendant was duly notified of the infringement and continued the same after such notice.

SEC. 6. That the provisions of sections 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, and 28 (as to class (b) marks only) of the Act approved February 20, 1905, entitled "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," as amended to date, and the provisions of section 2 of the Act entitled "An Act to amend the laws of the United States relating to the registration of trade--marks," approved May 4, 1906, are hereby made applicable to marks placed on the register provided for by section 1 of this Act.

SEC. 7. That written or printed copies of any records, books, papers, or drawings belonging to the Patent Office and relating to trade--marks placed on the register provided for by this Act, when authenticated by the seal of the Patent Office and certified

by the commissioner thereof, shall be evidence in all cases wherein the originals could be evidence, and any person, making application therefor and paying the fee required by law shall have certified copies thereof.

SEC. 8. That the same fees shall be required for certified and uncertified copies of papers and for records, transfers, and other papers, under this Act, as are required by law for such copies of patents and for recording assignments and other papers relating to patents. On filing an appeal under this Act to the Commissioner of Patents from the decision of the examiner in charge of interferences, awarding ownership of a trade--mark, canceling or refusing to cancel the registration of a trade--mark, a fee of $15 shall be payable.

SEC. 9. That section 5 of the Trade--Mark Act of February 20, 1905, being Thirty--third Statutes at Large, page 725, as amended by Thirty--fourth Statutes at Large, page 1251, Thirty--sixth Statutes at Large, page 918, Thirty--seventh Statutes at Large, page 649, is hereby amended by adding the following words thereto: "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 applicant for ten years, next preceding February 210, 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."