

94TH CONGRESS  
1ST SESSION

# S. 31

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## IN THE SENATE OF THE UNITED STATES

JANUARY 15, 1975

MR. McCLELLAN (for himself and MR. SCOTT of Pennsylvania) introduced the following bill, which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       That this Act be cited as the "Unfair Competition Act of  
4       1975".

5       SEC. 2 The title of the Act entitled "An Act to provide  
6       for the registration and protection of trademarks used in  
7       commerce, to carry out the provisions of certain interna-  
8       tional conventions, and for other purposes", approved July  
9       5, 1946 (60 Stat. 427), is amended by inserting after

1 “commerce,” the words “to protect persons against unfair  
2 competition”.

3 SEC. 3. Section 32 (2) (15 U.S.C. 1114 (2)) of said  
4 Act is amended by deleting its present introduction and para-  
5 graph (a) and substituting therefor: “Notwithstanding any  
6 other provision of this Act, the remedies given under this Act  
7 for the infringement of any right shall be limited as follows.

8 “(a) where an infringer is engaged solely in the  
9 business of printing for others and establishes that he  
10 was an innocent infringer, the owner of the right in-  
11 fringed shall be entitled as against such infringer only  
12 to an injunction against future printing;”.

13 SEC. 4. Section 34 (15 U.S.C. 1116) of said Act is  
14 amended by deleting from the end of the first sentence  
15 thereof “of the registrant of a mark registered in the Patent  
16 Office” and substituting therefor “protected under this Act”,  
17 and by inserting in the third paragraph after the word “pro-  
18 ceeding” (first occurrence) the words “involving a regis-  
19 tered trademark and”.

20 SEC 5. Section 35 (15 U.S.C. 1117) of said Act is  
21 amended by deleting the first sentence thereof and substi-  
22 tuting therefor: “When a violation of any right protected  
23 under this Act shall have been established in any civil action  
24 arising under this Act, the plaintiff shall be entitled, subject  
25 to the provisions of sections 29 and 32 and subject to the

1 principles of equity, to recover (1) defendant's profits, (2)  
2 any damages sustained by the plaintiffs, and (3) the costs  
3 of the action."

4 SEC. 6. Section 36 (15 U.S.C. 1118) of said Act is  
5 amended to read: "In any action arising under this Act,  
6 the court may order the labels, signs, prints, packages,  
7 wrappers, receptacles, and advertisements in the possession  
8 of the defendant, the use or intended use of which is in  
9 violation of any right protected under this Act, and all  
10 plates, molds, matrices, and other means of making the  
11 same, shall be delivered up and destroyed."

12 SEC. 7. Section 43 (15 U.S.C. 1125) of said Act is  
13 amended by deleting subsections (a) and (b) and substi-  
14 tuting therefor:

15 "SEC. 43. (a) Any person who shall engage in any  
16 act, trade practice, or course of conduct, in commerce,  
17 which—

18 "(1) causes or is likely to cause confusion, mistake,  
19 or deception as to the affiliation, connection, or associa-  
20 tion of such person, or as to the origin, sponsorship, or  
21 approval of his goods, services, or vocational activities,  
22 or results or is likely to result in passing off the goods,  
23 services, or vocational activities which he offers as or for  
24 those of any other person: *Provided*, That in cases aris-  
25 ing under this subsection which involve the simulation of

1 the physical appearance of goods, unqualified injunctive  
2 relief may be granted only if those features of appearance  
3 which have been simulated are (i) substantially nonfunc-  
4 tional, and (ii) serve to identify the source of such goods  
5 and to distinguish them from those manufactured or sold  
6 by others, or

7 “(2) by a false or misleading representation or  
8 omission of material information, either (i) misrepre-  
9 sents his goods, services, vocational activities, or their  
10 geographic origin, or (ii) misrepresents or disparages  
11 another person’s goods, services, vocational activities,  
12 or their geographic origin, or

13 “(3) results or is likely to result in the disclosure  
14 or appropriation of a trade secret or confidential infor-  
15 mation as a consequence of a breach of trust, theft, tres-  
16 pass or other tortious or unlawful conduct.

17 “(4) without being limited to or by the foregoing  
18 subsections (1) through (3), otherwise constitutes  
19 unfair competition by misrepresentation or misappropria-  
20 tion,

21 shall be liable in a civil action for unfair competition.

22 “(b) The remedies provided in this Act shall be avail-  
23 able to any person whose business or vocational activity, or  
24 the goodwill thereof, is or is likely to be damaged, to prevent  
25 and to recover for the forms of unfair competition enumerated

1 in paragraph (a) hereof *Provided*, That it shall not be nec-  
2 essary to prove competition between the parties, actual con-  
3 fusion, mistake, or deception, or, except where proof thereof  
4 may be required by a court in awarding relief under section  
5 35, intent to injure the business or vocational activity of any  
6 other person or the goodwill thereof.

7 “(c) The relief provided for by this section shall be  
8 in addition to and shall not affect those remedies otherwise  
9 available under this Act, under the common law, or pursuant  
10 to the statutes of any State or of the United States (including  
11 patent and copyright statutes). Nothing in this section shall  
12 be construed so as to preempt the jurisdiction of any State to  
13 grant relief in cases of unfair competition.”

14 SEC. 8. Section 44 (h) (15 U.S.C. 1126h) of said Act  
15 is amended to read “Any person designated in paragraph  
16 (b) of this section shall be entitled to the remedies pro-  
17 vided in this Act for unfair competition and infringement of  
18 marks.”

19 SEC. 9. The provided clause of section 46 (a) is amended  
20 by deleting “in force on the effective date of this Act” and  
21 inserting after “which does not relate to trademarks” the  
22 phrase “or unfair competition.”

23 ~~SEC. 10. Section 1338 (a) of title 28, United States~~  
24 Code, the first sentence is amended by inserting “, unfair  
25 competition” after “copyrights”.

1        SEC. 11. Section 1338 (b) of title 28, United States  
2 Code, is amended to read:

3        “(b) The district courts shall have original jurisdiction  
4 of any civil action asserting a claim of unfair competition  
5 under the law of any State, when joined with a sub-  
6 stantial and related claim under any Act of Congress relating  
7 to patents, copyrights, unfair competition, or trademarks.”

8        SEC. 12. This Act shall become effective upon enact-  
9 ment, but except as otherwise herein specifically provided  
10 it shall not affect any suit, proceeding, or appeal then  
11 pending.

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By Mr McCLELLAN and Mr SCOTT of  
Pennsylvania

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