

92^D CONGRESS
1ST SESSION

S. 647

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, JANUARY 26), 1971

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

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 1971".

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
7 Act for the infringement of any right shall be limited as
8 follows

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

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

21 SEC. 5 Section 35 (15 U.S.C. 1117) of said Act is
22 amended by deleting the first sentence thereof and substi-
23 tuting therefor "When a violation of any right protected
24 under this Act shall have been established in any civil action

1 arising under this Act, the plaintiff shall be entitled, subject
2 to the provisions of sections 29 and 32 and subject to the
3 principles of equity to recover (1) defendant's profits (2)
4 any damages sustained by the plaintiff, and (3) the costs
5 of the action" and by inserting a new sentence as the last
6 sentence of said section to read "The court in exceptional
7 cases may award reasonable attorneys' fees to the prevail-
8 ing party"

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

17 SEC 7. Section 43 (15 U.S.C. 1125) of said Act is
18 amended by deleting subsections (a) and (b) and substi-
19 tuting therefor

20 "SEC 43 (a) Any person who shall engage in any
21 act, trade practice, or course of conduct, in commerce,
22 which—

23 "(1) cause or is likely to cause confusion, mistake
24 or deception as to the affiliation, connection, or associa-

1 tion of such person, or as to the origin, sponsorship, or
2 approval of his goods, services, or vocational activities,
3 or results or is likely to result in passing off the goods,
4 services, or vocational activities which he offers as or for
5 those of any other person, or

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

12 “(3) results or is likely to result in the wrongful
13 disclosure or appropriation of a trade secret or confi-
14 dential information, or

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

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

20 “(b) The remedies provided in this Act shall be avail-
21 able to any person whose business or vocational activity, or
22 the goodwill thereof, is or is likely to be damaged, to prevent
23 and to recover for the forms of unfair competition enumerated
24 in paragraph (a) hereof *Provided*, That it shall not be nec-
25 essary to prove competition between the parties, actual con-

1 fusion, mistake, or deception, or intent to injure the business
2 or vocational activity of any other person or the goodwill
3 thereof.

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

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

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

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

22 SEC. 11. Section 1338 (b) of title 28, United States
23 Code, is amended to read

24 “(b) The district courts shall have original jurisdic-
25 tion of any civil action asserting a claim of unfair competi-

1 tion under the law of any State, when joined with a
2 substantial and related claim under any Act of Congress
3 relating to patents, copyrights, unfair competition, or trade-
4 marks ”

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

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