

Union Calendar No. 607

100TH CONGRESS
2D SESSION

H. R. 5372

[Report No. 100-1028]

To amend the Trademark Act of 1946 to make certain revisions relating to the registration of trademarks, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 1988

Mr. KASTENMEIER introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 3, 1988

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Trademark Act of 1946 to make certain revisions relating to the registration of trademarks, 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 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Trademark Law Revision
5 Act of 1988".

1 **SEC. 2. REFERENCE TO THE TRADEMARK ACT OF 1946.**

2 Except as otherwise expressly provided, whenever in
3 this Act an amendment is expressed in terms of an amend-
4 ment to a section or other provision, the reference shall be
5 considered to be made to a section or other provision of the
6 Act entitled "An Act to provide for the registration and pro-
7 tection of trade-marks used in commerce, to carry out the
8 provisions of certain international conventions, and for other
9 purposes", approved July 5, 1946 (15 U.S.C. 1051 and fol-
10 lowing) (commonly referred to as the "Trademark Act of
11 1946").

12 **SEC. 3. APPLICATION TO REGISTER TRADEMARKS.**

13 Section 1 (15 U.S.C. 1051) is amended—

14 (1) in the matter before subsection (a), by striking
15 out "may register his" and inserting in lieu thereof
16 "may apply to register his or her";

17 (2) by redesignating paragraphs (1), (2), and (3) of
18 subsection (a) as subparagraphs (A), (B), and (C), re-
19 spectively;

20 (3) by redesignating subsections (a), (b), and (c) as
21 paragraphs (1), (2), and (3), respectively;

22 (4) by inserting "(a)" after "SECTION 1.";

23 (5) in subsection (a)(1)(A), as redesignated by this
24 section—

1 (A) by striking out "applied to" and inserting
2 in lieu thereof "used on or in connection with";
3 and

4 (B) by striking out "goods in connection"
5 and inserting in lieu thereof "goods on or in con-
6 nection";

7 (6) in subsection (a)(1)(C), as redesignated by this
8 section, by striking out "actually";

9 (7) in subsection (a)(2), as redesignated by this
10 section, by striking out "filing" and inserting in lieu
11 thereof "prescribed";

12 (8) by redesignating subsection (d) as subsection
13 (e); and

14 (9) by inserting before subsection (e), as redesi-
15 gnated by paragraph (8) of this section, the following:

16 "(b) A person who has a bona fide intention to use a
17 trademark in commerce may apply to register the trademark
18 under this Act on the principal register hereby established:

19 "(1) By filing in the Patent and Trademark
20 Office—

21 "(A) a written application, in such form as
22 may be prescribed by the Commissioner, verified
23 by the applicant, or by a member of the firm or
24 an officer of the corporation or association apply-
25 ing, specifying applicant's domicile and citizen-

1 ship, applicant's bona fide intention to use the
2 mark in commerce, the goods on or in connection
3 with which the applicant has a bona fide intention
4 to use the mark and the mode or manner in which
5 the mark is intended to be used on or in connec-
6 tion with such goods, including a statement to the
7 effect that the person making the verification be-
8 lieves himself or herself, or the firm, corporation,
9 or association in whose behalf he or she makes
10 the verification, to be entitled to use the mark in
11 commerce, and that no other person, firm, corpo-
12 ration, or association, to the best of his or her
13 knowledge and belief, has the right to use such
14 mark in commerce either in the identical form
15 thereof or in such near resemblance thereto as to
16 be likely, when used on or in connection with the
17 goods of such other person, to cause confusion, or
18 to cause mistake, or to deceive; however, with the
19 exception of applications filed pursuant to section
20 44, no mark shall be registered until the applicant
21 has met the requirements of subsection (d) of this
22 section; and

23 "(B) a drawing of the mark.

24 "(2) By paying in the Patent and Trademark
25 Office the prescribed fee.

1 “(3) By complying with such rules or regulations,
2 not inconsistent with law, as may be prescribed by the
3 Commissioner.

4 “(c) At any time during examination of an application
5 filed under subsection (b), an applicant who has made use of
6 the mark in commerce may claim the benefits of such use for
7 purposes of this Act, by amending his or her application to
8 bring it into conformity with the requirements of subsection
9 (a).

10 “(d)(1) Within six months following the date of the
11 notice of allowance provided in section 13(b)(2), the applicant
12 must file in the Patent and Trademark Office, together with
13 such number of specimens or facsimiles of the mark as used
14 in commerce as may be required by the Commissioner and
15 payment of the prescribed fee, a verified statement that the
16 mark is in use in commerce and specifying the date of appli-
17 cant’s first use of the mark in commerce, those goods or serv-
18 ices specified in the notice of allowance on or in connection
19 with which the mark is used in commerce and the mode or
20 manner in which the mark is used on or in connection with
21 such goods or services. Subject to examination and accept-
22 ance of the statement of use, the mark shall be registered in
23 the Patent and Trademark Office, and a certificate of regis-
24 tration shall be issued for those goods or services recited in
25 the statement of use for which the mark is entitled to regis-

1 tration, and notice of registration shall be published in the
2 Official Gazette of the Patent and Trademark Office. Such
3 examination may include an examination of the factors set
4 forth in subsections (a) through (f) of section 2. The notice of
5 registration shall specify the goods or services for which the
6 mark is registered.

7 “(2) In exceptional circumstances the Commissioner
8 may, upon written request of the applicant before the expira-
9 tion of the 6-month period required by paragraph (1), extend
10 the time, for periods aggregating not more than 18 months,
11 for filing a verified statement of use required by such para-
12 graph. Such request shall be accompanied by a verified state-
13 ment that the applicant has a continued bona fide intention to
14 use the mark in commerce and specifying those goods or
15 services identified in the notice of allowance on or in connec-
16 tion with which the applicant has a continued bona fide inten-
17 tion to use the mark in commerce. Any request for an exten-
18 sion under this paragraph shall be accompanied by payment
19 of the prescribed fee.

20 “(3) The Commissioner shall notify any applicant who
21 files a statement of use of the acceptance or refusal thereof
22 and, if the statement of use is refused, the reasons therefor.
23 An applicant may amend the statement of use.

1 “(4) The failure to timely file a verified statement of use
2 under this subsection shall be considered to be an abandon-
3 ment of the application.”.

4 **SEC. 4. TRADEMARKS REGISTRABLE ON PRINCIPAL REGIS-**
5 **TER.**

6 Section 2 (15 U.S.C. 1052) is amended—

7 (1) by amending subsection (d) to read as follows:

8 “(d) consists of or comprises a mark which so resembles
9 a mark registered in the Patent and Trademark Office, or a
10 mark or trade name previously used in the United States by
11 another and not abandoned, as to be likely, when applied on
12 or in connection with the goods of the applicant, to cause
13 confusion, or to cause mistake, or to deceive: *Provided*, That
14 if the Commissioner determines that confusion, mistake, or
15 deception is not likely to result from the continued use by
16 more than one person of the same or similar marks under
17 conditions and limitations as to the mode or place of use of
18 the marks or the goods on or in connection with which such
19 marks are used, concurrent registrations may be issued to
20 such persons when they have become entitled to use such
21 marks as a result of their concurrent lawful use in commerce
22 prior to (1) the earliest of the filing dates of the applications
23 pending or of any registration issued under this Act; (2)
24 July 5, 1947, in the case of registrations previously issued
25 under the Act of March 3, 1881, or February 20, 1905, and

1 continuing in full force and effect on that date; or (3) July 5,
2 1947, in the case of applications filed under the Act of Febru-
3 ary 20, 1905, and registered after July 5, 1947. Use prior to
4 the filing date of any pending application or a registration
5 shall not be required when the owner of such application or
6 registration consents to the grant of a concurrent registration
7 to the applicant. Concurrent registrations may also be issued
8 by the Commissioner when a court of competent jurisdiction
9 has finally determined that more than one person is entitled
10 to use the same or similar marks in commerce. In issuing
11 concurrent registrations, the Commissioner shall prescribe
12 conditions and limitations as to the mode or place of use of
13 the mark or the goods on or in connection with which such
14 mark is registered to the respective persons;”;

15 (2) in subsection (e) by striking out “applied to”
16 each place it appears and inserting in lieu thereof
17 “used on or in connection with”; and

18 (3) in subsection (f) by—

19 (A) striking out “applied to” and inserting in
20 lieu thereof “used on or in connection with”; and

21 (B) striking out “five years” and all that fol-
22 lows through the end of the subsection and insert-
23 ing in lieu thereof “five years before the date on
24 which the claim of distinctiveness is made.”.

1 **SEC. 5. SERVICE MARKS REGISTRABLE.**

2 Section 3 (15 U.S.C. 1053) is amended by striking out
3 “used in commerce” in the first sentence.

4 **SEC. 6. COLLECTIVE AND CERTIFICATION MARKS REGIS-**
5 **TRABLE.**

6 Section 4 (15 U.S.C. 1054) is amended by striking out
7 “origin used in commerce,” and inserting in lieu thereof
8 “origin,”.

9 **SEC. 7. USE BY RELATED COMPANIES.**

10 Section 5 (15 U.S.C. 1055) is amended by adding at the
11 end thereof the following: “If first use of a mark by a person
12 is controlled by the registrant or applicant for registration of
13 the mark in respect to the nature and quality of the goods or
14 services, such first use shall inure to the benefit of the regis-
15 trant or applicant, as the case may be.”.

16 **SEC. 8. DISCLAIMER OF UNREGISTRABLE MATTER.**

17 Section 6(b) (15 U.S.C. 1056(b)) is amended by striking
18 out “paragraph (d)” and inserting in lieu thereof “subsec-
19 tion (e)”.

20 **SEC. 9. CERTIFICATE OF REGISTRATION ON THE PRINCIPAL**
21 **REGISTER.**

22 Section 7 (15 U.S.C. 1057) is amended—

23 (1) by redesignating subsections (c), (d), (e), (f),
24 and (g) as subsections (d), (e), (f), (g), and (h), respec-
25 tively;

26 (2) by inserting after subsection (b) the following:

1 “(c) Contingent on the registration of a mark on the
2 principal register provided by this Act, the filing of the appli-
3 cation to register such mark shall constitute constructive use
4 of the mark, conferring a right of priority, nationwide in
5 effect, on or in connection with the goods or services speci-
6 fied in the registration against any other person except for a
7 person whose mark has not been abandoned and who, prior
8 to such filing—

9 “(1) has used the mark;

10 “(2) has filed an application to register the mark
11 on the principal register which is pending or has result-
12 ed in registration of the mark on the principal register;
13 or

14 “(3) has filed a foreign application to register the
15 mark on the basis of which he or she has acquired a
16 right of priority, and has timely filed an application
17 under section 44(d) to register the mark on the princi-
18 pal register which is pending or has resulted in regis-
19 tration of the mark on the principal register.”;

20 (3) in subsection (d), as redesignated by paragraph
21 (1) of this section—

22 (A) in the collaborative first sentence by
23 striking out “, but the” and inserting in lieu
24 thereof “. No certificate of registration may be
25 issued to a related company of the applicant if the

1 application was filed under section 1(b), if the use
2 in commerce relied upon in the affidavit of use
3 was use by the related company and if, at the
4 time such use was made, there was an agreement
5 between the applicant and the related company
6 that the mark should be assigned to the related
7 company. The”;

8 (B) by striking out “fee herein provided” and
9 inserting in lieu thereof “prescribed fee”;

10 (4) in subsection (f), as redesignated by paragraph
11 (1) of this section, by striking out “fee required by
12 law” and inserting in lieu thereof “prescribed fee”; and

13 (5) in subsection (h), as redesignated by paragraph
14 (1) of this section, by striking out “required fee” and
15 inserting in lieu thereof “prescribed fee”.

16 **SEC. 10. DURATION OF REGISTRATION.**

17 Section 8(a) (15 U.S.C. 1058(a)) is amended by striking
18 out “twenty” and inserting in lieu thereof “ten”.

19 **SEC. 11. RENEWAL OF REGISTRATION.**

20 Section 9(a) (15 U.S.C. 1059(a)) is amended by striking
21 out “twenty” and inserting in lieu thereof “ten”.

22 **SEC. 12. ASSIGNMENT AND GRANT OF SECURITY INTEREST.**

23 Section 10 (15 U.S.C. 1060) is amended—

24 (1) in the first sentence by striking out “and in
25 any such assignment” and inserting in lieu thereof the

1 following: “. However, no application to register a
2 mark under section 1(b) shall be assignable prior to the
3 filing of the verified statement of use under section
4 1(d), except to a successor to the business of the appli-
5 cant, or portion thereof, to which the mark pertains, if
6 that business is ongoing and existing. In any assign-
7 ment authorized by this section”; and

8 (2) in the last paragraph by striking out “1(d)”
9 and inserting in lieu thereof “1(e)”.

10 **SEC. 13. EXAMINATION OF APPLICATION.**

11 Section 12(a) (15 U.S.C. 1062(a)) is amended by—

12 (1) striking out “fee herein provided” and insert-
13 ing in lieu thereof “prescribed fee”; and

14 (2) striking out “to registration, the” and insert-
15 ing in lieu thereof “to registration, or would be entitled
16 to registration upon the acceptance of the statement of
17 use required by section 1(d) of this Act, the”.

18 **SEC. 14. OPPOSITION TO MARKS.**

19 Section 13 (15 U.S.C. 1063) is amended by—

20 (1) inserting “(a)” before “Any person”;

21 (2) striking out “required fee” and inserting in
22 lieu thereof “prescribed fee”; and

23 (3) adding at the end thereof the following:

24 “(b) Unless registration is successfully opposed—

1 “(1) a mark entitled to registration on the princi-
2 pal register based on an application filed under section
3 1(a) or pursuant to section 44, shall be registered in
4 the Patent and Trademark Office, and a certificate of
5 registration issued, and notice of the registration shall
6 be published in the Official Gazette of the Patent and
7 Trademark Office; or

8 “(2) a notice of allowance shall be issued to the
9 applicant if the applicant applied for registration under
10 section 1(b).

11 **SEC. 15. CANCELLATION OF REGISTRATIONS.**

12 Section 14(c) (15 U.S.C. 1064(c)) is amended to read as
13 follows:

14 “(c) at any time if the registered mark becomes the ge-
15 neric name for the goods or services, or a portion thereof, for
16 which it is registered, or has been abandoned, or its registra-
17 tion was obtained fraudulently or contrary to the provisions
18 of section 4 or of subsection (a), (b), or (c) of section 2 for a
19 registration hereunder, or contrary to similar prohibitory pro-
20 visions of such prior Acts for a registration thereunder, or if
21 the registered mark is being used by, or with the permission
22 of, the registrant so as to misrepresent the source of the
23 goods or services on or in connection with which the mark is
24 used. If the registered mark becomes the generic name for
25 less than all of the goods or services for which it is regis-

1 tered, a petition to cancel the registration for only those
2 goods or services may be filed. A registered mark shall not be
3 deemed to be the generic name of goods or services solely
4 because such mark is also used as a name of or to identify a
5 unique product or service. The primary significance of the
6 registered mark to the relevant public rather than purchaser
7 motivation shall be the test for determining whether the reg-
8 istered mark has become the generic name of goods or serv-
9 ices on or in connection with which it has been used; or”

10 **SEC. 16. INCONTESTABILITY OF RIGHT TO USE MARK.**

11 Section 15(4) (15 U.S.C. 1065(4)) is amended by strik-
12 ing out “the common descriptive name of any article or sub-
13 stance, patented or otherwise” and inserting in lieu thereof
14 “the generic name for the goods or services or a portion
15 thereof, for which it is registered”.

16 **SEC. 17. INTERFERENCE.**

17 Section 16 (15 U.S.C. 1066) is amended by striking out
18 “applied to the goods or when used in connection with the
19 services” and inserting in lieu thereof “used on or in connec-
20 tion with the goods or services”.

21 **SEC. 18. ACTION OF COMMISSIONER IN PROCEEDINGS.**

22 Section 18 (15 U.S.C. 1068) is amended by striking out
23 “or restrict” and inserting in lieu thereof “the registration, in
24 whole or in part, may modify the application or registration

1 by limiting the goods or services specified therein, may other-
2 wise restrict or rectify with respect to the register”.

3 **SEC. 19. APPEALS.**

4 Section 21 (15 U.S.C. 1071) is amended—

5 (1) in subsection (a), by striking out “section
6 21(b)” each place it appears and inserting in lieu there-
7 of “subsection (b)”;

8 (2) in subsection (a), by striking out “section
9 21(a)(2) hereof” and inserting in lieu thereof “para-
10 graph (2) of this subsection”; and

11 (3) in subsection (b)(1), by striking out “section
12 21(a)” each place it appears and inserting in lieu
13 thereof “subsection (a)”.

14 **SEC. 20. CANCELLATION ON SUPPLEMENTAL REGISTER.**

15 Section 24 (15 U.S.C. 1092) is amended by striking out
16 “verified” in the second sentence;

17 **SEC. 21. PROVISIONS OF ACT APPLICABLE TO SUPPLEMEN-**
18 **TAL REGISTER.**

19 Section 26 (15 U.S.C. 1094) is amended by—

20 (1) inserting “1(b),” after “sections”; and

21 (2) inserting “7(c),” after “7(b)”.

22 **SEC. 22. NOTICE OF REGISTRATION.**

23 Section 29 (15 U.S.C. 1111) is amended by striking out
24 “as used”.

1 **SEC. 23. CLASSIFICATION OF GOODS AND SERVICES.**

2 Section 30 (15 U.S.C. 1112) is amended by—

3 (1) inserting “or registrant’s” after “applicant’s”;

4 (2) striking out “may file an application” and in-
5 serting in lieu thereof “may apply”;6 (3) striking out “goods and services upon or in
7 connection with which he is actually using the mark:”
8 and inserting in lieu thereof “goods or services on or in
9 connection with which he or she is using or has a bona
10 fide intention to use the mark in commerce:”; and11 (4) amending the proviso to read as follows: “*Pro-*
12 *vided*, That if the Commissioner by regulation permits
13 the filing of an application for the registration of a
14 mark for goods or services which fall within a plurality
15 of classes, a fee equaling the sum of the fees for filing
16 an application in each class shall be paid, and the
17 Commissioner may issue a single certificate of registra-
18 tion for such mark.”.19 **SEC. 24. INFRINGEMENT.**20 Section 32(2) (15 U.S.C. 1114(2)) is amended by strik-
21 ing out “injunction” and inserting in lieu thereof “injunc-
22 tive”.23 **SEC. 25. REMEDIES.**24 (a) **PRIMA FACIE EVIDENCE OF EXCLUSIVE RIGHT TO**
25 **USE MARK.**—Section 33(a) (15 U.S.C. 1115(a)) is amended

1 by inserting “or in connection with” after “prima facie
2 evidence of”.

3 (b) CONCLUSIVE EVIDENCE OF EXCLUSIVE RIGHT TO
4 USE MARK.—Section 33(b) (15 U.S.C. 1115(b)) is amended
5 in paragraph (5) by striking out “registration of the mark
6 under this Act or” and inserting in lieu thereof “(A) the date
7 of constructive use of the mark established pursuant to sec-
8 tion 7(c), (B) the registration of the mark under this Act if the
9 application for registration is filed prior to the effective date
10 of the Trademark Law Revision Act of 1988, or (C)”.

11 (c) INJUNCTIONS.—Section 34(d) (15 U.S.C. 1116(d)) is
12 amended—

13 (1) in paragraph (1)(A) by inserting “on or” after
14 “using a counterfeit mark”; and

15 (2) in paragraph (4)(B)(iii) by inserting “on or”
16 after “used a counterfeit mark”.

17 SEC. 26. JURISDICTION.

18 (a) JURISDICTION OF COURTS.—Section 39 (15 U.S.C.
19 1121) is amended by inserting “(a)” after “SEC. 39.”.

20 (b) CERTAIN ACTIONS BY STATES PRECLUDED.—Sec-
21 tion 39a (15 U.S.C. 1121a) is amended—

22 (1) by striking out “SEC. 39a.” and inserting in
23 lieu thereof “(b)”; and

24 (2) by striking out “servicemarks” each place it
25 appears and inserting in lieu thereof “service marks”.

1 SEC. 27. CONSUMER STANDING.

2 Section 43(a) (15 U.S.C. 1125(a)) is amended by insert-
3 ing “, including a consumer,” before “who believes”.

4 SEC. 28. INTERNATIONAL MATTERS.

5 Section 44 (15 U.S.C. 1126) is amended—

6 (1) by striking out “paragraph (b)” each place it
7 appears and inserting in lieu thereof “subsection (b)”;

8 (2) in subsection (d) by striking out “sections 1, 2,
9 3, 4, or 23” and inserting in lieu thereof “section 1, 3,
10 4, 23, or 44(e)”;

11 (3) in subsection (d)(2) by striking out “but use in
12 commerce need not be alleged” and inserting in lieu
13 thereof “including a statement that the applicant has a
14 bona fide intention to use the mark in commerce”;

15 (4) in subsection (d)(3) by striking out “foreing”
16 and inserting in lieu thereof “foreign”;

17 (5) in subsection (e) by adding at the end thereof
18 the following: “The application must state the appli-
19 cant’s bona fide intention to use the mark in com-
20 merce, but use in commerce shall not be required prior
21 to registration.”; and

22 (6) in subsection (f) by striking out “paragraphs
23 (c), (d),” and inserting in lieu thereof “subsections (c),
24 (d),”.

25 SEC. 29. CONSTRUCTION AND DEFINITIONS.

26 Section 45 (15 U.S.C. 1127) is amended—

1 (1) by amending the paragraph defining “trade-
2 mark” to read as follows:

3 “The term ‘trademark’ includes any word, name,
4 symbol, or device or any combination thereof used by a
5 person, or which a person has a bona fide intention to use in
6 commerce and for which such person applies for registration
7 on the principal register established by this Act, to identify
8 and distinguish his or her goods, including a unique product,
9 from those manufactured or sold by others and to indicate the
10 source of the goods, even if that source is unknown.”;

11 (2) by amending the paragraph defining “service
12 mark” to read as follows:

13 “The term ‘service mark’ means any word, name,
14 symbol, or device or any combination thereof used by a
15 person, or which a person has a bona fide intention to use in
16 commerce and for which such person applies for registration
17 on the principal register established by this Act, to identify
18 and distinguish the services of one person, including a unique
19 service, from the services of others and to indicate the source
20 of the services, even if that source is unknown. Titles, char-
21 acter names, and other distinctive features of radio or televi-
22 sion programs may be registered as service marks notwith-
23 standing that they, or the programs, may advertise the goods
24 of the sponsor.”;

1 (3) by amending the paragraph defining “certifica-
2 tion mark” to read as follows:

3 “The term ‘certification mark’ means any word, name,
4 symbol, or device or any combination thereof used by a
5 person other than its owner, or for which there is a bona fide
6 intention for such use in commerce through the filing of an
7 application for registration on the principal register estab-
8 lished by this Act, to certify regional or other origin, materi-
9 al, mode of manufacture, quality, accuracy, or other charac-
10 teristics of such person’s goods or services or that the work
11 or labor on the goods or services was performed by members
12 of a union or other organization.”;

13 (4) by amending the paragraph defining “collec-
14 tive mark” to read as follows:

15 “The term ‘collective mark’ means a trademark or serv-
16 ice mark used by the members of a cooperative, an associa-
17 tion, or other collective group or organization, or which such
18 entity has a bona fide intention to use in commerce and for
19 which it applies for registration on the principal register es-
20 tablished by this Act, and includes marks indicating member-
21 ship in a union, an association, or other organization.”;

22 (5) by amending the matter which appears be-
23 tween the paragraph defining “mark”, and the para-
24 graph defining “colorable imitation” to read as follows:

1 “The term ‘use in commerce’ means the bona fide use of
2 a mark in the ordinary course of trade, and not made merely
3 to reserve a right in a mark. For purposes of this Act, a mark
4 shall be deemed to be in use in commerce—

5 “(1) on goods when—

6 “(A) it is placed in any manner on the goods
7 or their containers or the displays associated
8 therewith or on the tags or labels affixed thereto,
9 and

10 “(B) the goods are sold or transported in
11 commerce, and

12 “(2) on services when it is used or displayed in
13 the sale or advertising of services and the services are
14 rendered in commerce, or the services are rendered in
15 more than one State or in the United States and a for-
16 eign country and the person rendering the services is
17 engaged in commerce in connection therewith.

18 “A mark shall be deemed to be ‘abandoned’—

19 “(1) when its use has been discontinued with
20 intent not to resume. Intent not to resume may be in-
21 ferred from circumstances. Nonuse for two consecutive
22 years shall be prima facie evidence of abandonment.

23 ‘Use’ means use made in the ordinary course of trade
24 and not made merely to reserve a right in a mark; or

1 “(2) when any course of conduct of the owner, in-
2 cluding acts of omission as well as commission, causes
3 the mark to become the generic name for the goods or
4 services or otherwise to lose its significance as a mark.
5 Purchaser motivation shall not be a test for determin-
6 ing abandonment under this paragraph.”.

7 **SEC. 30. PENDING APPLICATIONS.**

8 The Trademark Act of 1946 is amended by adding at
9 the end thereof the following:

10 “SEC. 51. All certificates of registration based upon ap-
11 plications for registration pending in the Patent and Trade-
12 mark Office on the effective date of the Trademark Law Re-
13 vision Act of 1988 shall remain in force for a period of 10
14 years.”.

15 **SEC. 31. EFFECTIVE DATE.**

16 This Act and the amendments made by this Act shall
17 become effective on the date which is one year after the date
18 of enactment of this Act.

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