

REGISTRATION OF TRADE-MARKS USED IN COMMERCE WITH FOREIGN NATIONS, ETC.

DECEMBER 19, 1904.—Referred to the House Calendar and ordered to be printed.

Mr. BONYNGE, from the Committee on Patents, submitted the following

REPORT.

[To accompany H. R. 16560.]

The Committee on Patents, to whom was referred House bill 16560, respectfully report that they have had the same under consideration and recommend that it do pass.

The subject of the revision and modification of the laws relating to trade-marks has been very carefully considered by your committee. A number of bills on this subject were referred to the committee. Numerous hearings were had and all parties having an interest in the proposed legislation were given full opportunity to present their views to your committee.

The subject-matter of the bill, which is herewith reported, has been in one form or another before the Congress of the United States at practically every session since 1870. At that time an act was passed entitled "An act to revise, consolidate, and amend the statutes relating to patents and copyrights." The said act sought to establish a regulation of trade-marks applicable to all trades, and was not confined in its terms to a regulation of commerce between the States, or with foreign nations or Indian tribes. At the time of the passage of the act in question it was apparently the opinion of Congress that protection to trade-marks was an exercise of the power granted to Congress by the eighth paragraph of section 8 of Article I of the Constitution, providing that Congress shall have power "To promote the progress of science and useful arts by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries."

In 1876 Congress passed another act, making certain violations of the trade-mark law penal offenses. Under these statutes indictments were found in different circuit courts of the United States, and the judges of two United States circuit courts made certificates of division of opinion as to the constitutionality of Federal legislation upon the subject of trade-marks. By this means the question was brought before



the Supreme Court of the United States in a case reported in the October term of that court, 1879, known as the trade-mark cases, 100 U. S., 82. In that case it was held by the court that the law in question could not be supported as an exercise of the power given to Congress by clause 8 of section 8 of Article I of the Constitution, for the reason that the exclusive right to a trade-mark does not depend upon novelty, invention, discovery, or any work of the brain, and that the right to the use of a trade-mark was founded solely on priority of appropriation. It was further held in the same case that the law could not be supported as an exercise of the power given to Congress to regulate foreign commerce, or commerce among the several States, or with the Indian tribes, because by its terms it was not so limited, and as the court was unable to separate the good from the bad without creating a new law, the whole statute was declared by the court to be unconstitutional.

The decision above referred to created great disturbance among manufacturers, and Congress was flooded with proposed new legislation on the subject, even including a resolution for an amendment to the Constitution of the United States granting to Congress express power to regulate the use of trade-marks. Finally the present act regulating the use of trade-marks was passed and approved March 3, 1881. The law, as it now stands, is confined in its provisions to commerce with foreign nations and with the Indian tribes. It does not seek to regulate the use of trade-marks used in interstate commerce. The report of the committee upon the present act shows that at that time Congress was of the opinion that the power to legislate upon the subject of trade-marks came within the treaty-making power, and was not based at all upon the power given to Congress by the commerce clause of the Constitution. For that reason the provisions of the act now upon the statute books relate solely to commerce with foreign nations and with Indian tribes.

The United States is a member of the union created by the convention for the protection of industrial property concluded at Paris, March 20, 1883, of which the other members are Belgium, Brazil, Denmark, Dominican Republic, France, Great Britain, Italy, Japan, Netherlands, Norway, Portugal, Spain, Servia, Sweden, Switzerland, and Tunis.

The United States has also made separate treaties, conventions, and declarations, relating in whole or in part to trade-marks, with Austria, Hungary, Belgium, Brazil, Denmark, France, Germany, Great Britain, Italy, Japan, Russia, Servia, and Spain. By these various conventions and treaties the United States has assumed certain obligations relating to the regulation of trade-marks, many of which we have not, up to this time, observed.

By an act approved June 4, 1898, commissioners were appointed by the President to revise and amend the laws of the United States concerning trade and other marks, so far as the same relate to matters which are contained in or are affected by the convention for the protection of industrial property concluded at Paris, March 20, 1883, which is referred to above, and to the treaties of the United States and laws of other nations relating to trade or other marks, and trade or commercial names. The committee thus appointed by the President consisted of Mr. Francis Forbes, Mr. Peter Stenger Grosscup, and Mr. Arthur P. Greeley. They made a very elaborate and exhaustive report upon the



subject of trade-marks and patents, which was published as Document No. 20, Fifty-sixth Congress, second session. The commissioners thus appointed also prepared a bill, which was submitted with their report, revising and amending the trade-mark laws of the United States, but up to the present time there has been no amendment of the act approved in 1881.

Your committee has carefully examined the report of the commissioners above-named, and the provisions of the bill proposed by them, in connection with the provisions of the various bills on the same subject referred to your committee, and after such examination it is the unanimous opinion of your committee that the bill submitted herewith would be constitutional legislation, and would so amend the trade-mark laws of the United States as to conform to our treaty obligations with the other nations.

THE CONSTITUTIONAL QUESTION.

The first question presented to the Committee for its consideration was whether Congress has Constitutional power to regulate the use of trade-marks.

There is no express reference to trade-marks in the constitution of the United States, nor any express authority given by the constitution to legislate upon this subject. At the time of the adoption of the Constitution the subject of trade-marks was not recognized as one of importance to the commerce of the United States, either internal or foreign. There had been only three reported cases involving the right to the use of a trade-mark reported in Great Britain prior to that time. The first reported case in the United States upon the subject was in 1837. The first statute of Great Britain upon the subject was adopted in 1862. The law of trade-marks is therefore of recent origin and growth. Its growth has been very rapid within the past fifty years, and at the present time a large majority of the states in the union have statutes regulating the registration and the use of trade-marks.

We have heretofore in this report given a brief reference to the legislation upon the subject of trade-marks passed by the Congress of the United States.

If Congress has the power to pass the legislation proposed, it must, in the opinion of your committee, be under the clause of section 8 of Article I of the Constitution, which gives to Congress power to regulate commerce with foreign nations, among the several States, and with the Indian tribes. Your committee, after careful study and investigation, are of the opinion that Congress has such power. This precise question has not been presented to the Supreme Court of the United States. In the trade-mark case above referred to (100 U. S., 82) the court expressly refused to pass upon this question. The exact language of the court was as follows:

The question, therefore, whether the trade-mark bears such a relation to commerce in general terms as to bring it within Congressional control, when used or applied to the classes of commerce which fall within that control, is one which, in the present case, we propose to leave undecided. We adopt this course because when this court is called on in the course of the administration of the law to consider whether an act of Congress, or any other department of the Government, is within the constitutional authority of that department, a due respect for a coordinate branch of the Government requires that it shall decide that it has transcended its powers only when that is so plain that we can not avoid the duty.



The act of 1881 has been before the courts of the United States in many cases, but the question of its constitutionality has never been raised or discussed. We therefore have no decision of the Federal courts settling the proposition now under consideration. We are consequently obliged to determine the question for ourselves upon an independent investigation, being governed in that investigation by decisions of the Supreme Court upon somewhat similar cases and the language used by the court in various cases involving the power given to Congress under the commerce clause of the Constitution.

While it is true that there is no express provision in the Constitution, giving this particular power to Congress, for the reason that the subject was one not then regarded as of importance, it does not follow that Congress has not this power. As was said in the Debs case (158 U. S., 564):

Constitutional provisions do not change, but their operation extends to new matters as the modes of business and the habits of life of the people vary with each succeeding generation. * * * The Constitution has not changed. The power is the same. But it operates to-day upon modes of interstate commerce unknown to the fathers, and it will operate with equal force upon any new modes of such commerce which the future may develop.

The real question to be determined is whether trade-marks bear such a relation to commerce in general as to bring them within Congressional control, and whether the law providing for the registration of trade-marks used in foreign and interstate commerce and commerce with the Indian tribes is a regulation of such commerce. That a trade-mark is generally accepted as bearing a very close relation to commerce is evident from its name, its origin, its history, and the legislation upon the subject of trade-marks in nearly all the States of the Union and the leading commercial nations of the world. The first suggestion for Federal legislation upon the subject was contained in a petition presented to the Second Congress by certain manufacturers of Boston, asking that they be given the exclusive right to the use of certain marks for the designation of their goods. Upon that petition Thomas Jefferson, then Secretary of State, made a report, in which he recommended the adoption of Federal legislation upon the subject, and used this language:

That it will, therefore, be reasonable for the General Government to provide in this behalf by law for those cases of manufacture generally, and those only, which relate to commerce with foreign nations and among the several States and with the Indian tribes—

showing conclusively that he based his opinion that Congress had power to legislate upon the subject upon the commerce clause of the Constitution. There is no right to the use of a trade-mark which is separate and distinct from its application to goods used in commerce. There can be no ownership of a trade-mark which is not applied to goods and merchandise used in commerce. It bears in many respects a striking resemblance to the good will of a business. In all of the early cases upon the subject of trade-marks, commencing with the first case, that of *Blanchard v. Hill*, in 1742, the close relationship of trade-marks to commerce has been recognized by all of the courts. Every commercial nation of the world of any importance has a law regulating the registration and protection of trade-marks. We conclude, therefore, that the use of a trade-mark bears a very close and intimate relation to commerce.



We are then confronted with the next question, whether under the term "commerce," as used in the Constitution, we can include trade-marks. The Supreme Court of the United States has in many cases given a very liberal construction to the use of the term "commerce." The first and leading case upon the commerce clause of the Constitution is that of *Gibbons v. Ogden*, reported in 9 Wheaton, at page 1. In that case Mr. Daniel Webster was one of the attorneys, and in the course of his argument he recited the history of the commerce clause in the Constitution, and showed that one of the immediate objects of the convention to form a constitution was the necessity of having uniform regulations of commerce. The case itself involved the constitutionality of the law of New York granting to Robert R. Livingston and Robert Fulton the right to the exclusive navigation of all the waters within the jurisdiction of that State, with boats moved by fire or steam, for a term of years. Mr. Webster contended, and satisfied the court, that the people intended by the provision of the Constitution in question to transfer from the several States to a general government those high and important powers of commerce which, in their exercise, were necessary to maintain a uniform and general system.

Chief Justice Marshall delivered the opinion of the court, in which he held that the commerce clause of the Constitution should not have a strict or narrow construction which would cripple the Government and render it unequal to the objects for which it had been established. He further held that the object for which the power was given should be considered in determining its extent. We find in that opinion the following definition of "commerce:"

Commerce, undoubtedly, is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. * * * It has been truly said that commerce, as the word is used in the Constitution, is a unit, every part of which is indicated by the term. * * * The power is to regulate—that is, to prescribe the rules by which commerce is to be governed.

Mr. Justice Johnson delivered a separate opinion in the same case, in which he said:

Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange, become commodities, and enter into commerce; the subject, the vehicle, the agent, and their various operations, become the objects of commercial regulation.

A few years later, in the case of *Brown v. Maryland* (12 Wheaton, 419), Chief Justice Marshall was again called upon to construe the commerce clause of the Constitution. In that opinion he expressed, even more strongly than in the previous case, the fact that one of the principal objects for the formation of a constitution was to give to one legislative body the power to regulate commerce with foreign nations and among the several States, and he used this language:

It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce, and all commerce among the States. To construe the power so as to impair its efficacy would tend to defeat an object, on the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity.

A number of other cases might be cited giving the judicial construction of the clause of the Constitution now under consideration; but we pass without reference to them to a very recent case, that of the



Addyston Pipe and Steel Co. v. United States (175 U. S., 211). In that case the court held:

Interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities. But upon the matter of interstate and foreign commerce and the proper regulation thereof, the subject being not alone national but international in its character, the great importance of having but one source for the law which regulates that commerce throughout the length and breadth of the land can not in our opinion be overestimated. Each State in that event would have complete jurisdiction over the commerce which was wholly within its own borders, while the jurisdiction of Congress, under the provisions of the Constitution, over interstate commerce would be paramount, and would include therein jurisdiction over contracts of the nature we have been discussing.

The court further said:

The power to regulate commerce means the power to prescribe rules by which it shall be governed.

It was also said in the case of *Gloucester Ferry Co. v. Pennsylvania* (114 U. S., 196):

Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities. The power to regulate that commerce as well as commerce with foreign nations vested in Congress is the power to prescribe the rules by which it shall be governed; that is, the conditions upon which it shall be conducted; to determine when it shall be free and when subject to duties and other exactions.

And in *Champion v. Ames* (188 U. S., 321) it was held that an act of Congress prohibiting the transportation of lottery tickets from one State to another was a regulation of interstate commerce.

We have thus seen that the use of trade-marks bears a very close relationship to commerce; that the trade-mark is only of value where it is attached to a subject of commerce—that is, to goods or merchandise which are to be used in commerce. We have further seen that Congress has the power to regulate—that is, to prescribe the rules which shall govern certain kinds of commerce. We confidently submit that the regulation of a trade-mark comes within the power to prescribe the rules by which commerce shall be governed and controlled. Congress, however, is limited in its regulation of commerce, by the express language of the Constitution, to commerce with foreign nations, among the several States, or with the Indian tribes, and its power over that subject is full, complete, and exclusive.

Having determined that Congress has the constitutional power to enact legislation upon the subject of trade-marks used in the commerce which comes within the jurisdiction of Congress, we now pass to a consideration of the provisions of the bill herewith submitted.

THE BILL.

The main objects sought to be accomplished by the bill herewith reported are, first, to make provision for the registration of trade-marks used in interstate commerce, as well as those used in foreign commerce, and in commerce with the Indian tribes; second, to provide a procedure which will give uniformity to the laws governing the registration of trade-marks; third, to provide additional penalties for the infringement of a registered trade-mark; fourth, to reduce the fee required on filing an application for the registration of a trade-mark;



fifth, to regulate the procedure for the registration of a trade-mark governing cases of interfering or conflicting claims to the use of trade-marks; sixth, to make our statutes conform to treaty stipulations entered into between the United States and certain other governments.

The first section of the bill provides for the registration of trade-marks used in interstate commerce, as well as in commerce with foreign nations and with Indian tribes, and provides for a reduction of the amount of the fee required for the registration of a trade-mark from \$25 to \$10.

The second, third, and fourth sections of the proposed bill relate to the procedure for the registration of trade-marks.

As little change as possible throughout the bill has been made in the existing law. Only such changes as were necessary to make the law agree with our treaty obligations, or to accomplish the purposes of the proposed amendments, have been made. The language of the present act has been retained throughout the bill in every case where it was possible to do so.

In the past there has been considerable complaint in regard to what could be registered under the existing law as a trade-mark. Much of the time of the committee in the hearing of the bill has been consumed in a discussion upon this particular feature of the legislation. Section 5 of the proposed bill we believe will permit the registration of all marks which could, under the common law as expounded by the courts, be the subject of a trade-mark and become the exclusive property of the party using the same as his trade-mark.

The language of section 5 is taken almost verbatim from section 5 of the bill proposed by Mr. Arthur P. Greeley, as contained in the report of the Commissioners appointed to revise the statutes relating to patents, trade and other marks, and trade and commercial names, under the act of Congress approved June 4, 1894. Full protection is given by the court, under the doctrine of unfair competition, to the users of such marks as do not, under the common law, constitute technically what is known as a trade-mark, and which can become the subject of exclusive ownership. By other sections of the bill, to which attention will be called later, provision is made for an appeal from the decision of the Commissioner of Patents to the district court of the District of Columbia from a decision refusing the registration of a trade-mark. By these provisions of the bill it would seem that there could not be a conflict of decisions, about which so much complaint has been made in the past. Through the decisions of the courts a uniform system and uniform rules governing and controlling the registration of marks will in time be adopted.

A proviso has been added permitting all marks that have been in actual use as trade-marks for a period of ten years to be registered.

The procedure provided by the bill for the registration of trade-marks is similar in many respects to the procedure in patent cases. When the application for registration is filed section 6 provides for an examination of the mark offered for registration. If upon such examination the application is refused, notice is given to the applicant, in order that he may appeal, if he so desires, from the decision. The procedure for appeals is regulated by other sections of the bill. If, on the other hand, the examination discloses that the mark is entitled to registration, then the act provides that the Commissioner shall cause



the mark to be published at least once in the Official Gazette of the Patent Office. The purpose of this publication is apparent. Owners of trade-marks ought not to have their rights to the use of a trade-mark jeopardized by the registration of similar trade-marks by other parties not entitled to the use of the same. Some notice should be given whereby the true owners of marks may have an opportunity to be heard by the Commissioner of Patents before any mark is registered and given, by reason of such registration, the evidence of ownership provided for by the terms of the bill.

By section 7 provision is made for proceedings in case of notice of opposition to the registration of a mark, and also where an interference exists between a trade-mark offered for registration and one already registered or a known trade-mark in use.

An appeal is also provided by section 8 from the examiner in charge of trade-marks, or the examiner in charge of interferences, to the Commissioner in person.

A further appeal is provided by section 9 from the decision of the Commissioner of Patents to the court of appeals of the District of Columbia, and the same rules and procedure for such appeals are adopted as those which control appeals from the decision of the Commissioner on an application for a patent or parties to an interference as to an invention.

Section 10 provides for the assignment of trade-marks either before or after registration, but requires that such assignment shall only be valid when made in connection with the good will of the business in which the mark is used and when recorded within three months from the date thereof.

Section 11 is almost identical with section 4 of the act of 1881, except that section 11 of the bill submitted herewith provides that the certificate of registration shall be under the seal of the Patent Office instead of under the seal of the Department of the Interior. The certificates are to be issued by the Commissioner of Patents, who should attach his seal, which is under his control, rather than the seal of the Department of the Interior.

By section 12 of the bill submitted herewith the life of a certificate of registration is changed from thirty years to twenty years. The purpose of this change is to make the term of such registration correspond with the term for which registration is granted by the international union for the registration of trade-marks. The right to the use of a trade-mark is perpetual, so long as the same is actually used in commerce. Such perpetual ownership of a mark is provided for by means of renewals of certificates, upon application made in accordance with the terms of the proposed bill.

By section 13 provision is made for the cancellation of registration of marks which may not have been entitled to registration. The only notice which is required, according to the provisions of the bill, of the application for the registration of a trade-mark is the publication of the application once in the Official Gazette. The purpose of this provision is to give to the owner of a mark an opportunity to have a prior registration of his mark, if granted, canceled upon a proper showing.

By sections 14 and 15 provision is made for the payment of fees, and such provisions are taken largely from similar regulations in regard to fees upon applications for a patent.



A remedy at law is given to the owners of trade-marks by section 16. The provision contained in this section to give the court power to enter a judgment on a verdict for three times the amount of the verdict, in such cases as the court may deem it advisable, is new in the law of trade-marks. Similar provisions exist in the copyright and patent laws and in other statutes. The difficulty of proving exact damages in cases of this character is well understood. It has seemed to your committee proper that the Government, which has made provision for the registration of trade-marks, should accord to the owners thereof, who have complied with the terms of the statute, full and complete redress for violation of their rights. By another section of the bill provision is made for designating registered trade-marks by printing under the trade-mark the fact that it is registered, as is done in cases of patents, so that any person who imitates or counterfeits a trade-mark will do so with notice and should therefore be held to a strict accountability for the fraud committed.

Section 17 defines what United States courts shall have jurisdiction of suits involving the rights to registered trade-marks.

Section 18 provides that writs of certiorari may be granted by the Supreme Court of the United States for the review of cases arising under this act, which section is taken from the Federal statute relating to patents.

By section 19 provision is made for proceedings in equity against the infringer of a registered trade-mark. This section corresponds in terms with section 4921 of the Revised Statutes relating to patent cases, except that it specially provides the manner in which profits shall be ascertained. Under existing rules it is necessary for the complainant to prove sales and costs with entire and absolute accuracy. The only persons having knowledge of the cost of making the sales are the defendant or some one in his employ. It has seemed, therefore, only fair and just that if the complainant proves the sales, the defendant should be required to produce evidence of the expenses he was put to in making such sales as an offset against the sales proven by the complainant.

The provisions of section 20 are taken from section 4966 of the Revised Statutes relative to copyrights and are equally applicable, or should be, to trade-marks as to copyrights.

Section 21 is practically the same as section 8 of the present trade-mark act. The only change in the section as now drawn relates to trade-marks which have been abandoned.

Section 22 provides for the cancellation of certificates of registration which have been granted to applicants who are subsequently found not to be the owners of the marks. This section provides only for the cancellation of trade-marks which are in conflict with other registered trade-marks. Section 13 of the proposed bill provides that any person, whether the owner of any registered trade-mark or not, who may deem himself injured by the registration of a mark, may make application to the Commissioner of Patents to cancel the registration thereof, and proceedings are provided for any such case protecting the rights of the registrant of the mark.

Section 23 is identical with section 10 of the act of 1881 on the subject of trade-marks, and is intended to give the user of a commercial mark, whether such mark comes within the technical definition of a trade-mark under the provisions of the proposed act the right to have



such remedy against those who make use of such mark with fraudulent intent, as is given by the courts under the doctrine of unfair competition, and to further provide that the courts of the United States shall continue to have such jurisdiction as they now have to enforce relief in such cases.

The provisions of section 24 are believed to be self-explanatory.

Section 25 is identical in its provisions with section 9 of the present trade-mark act.

Section 26 is identical in its provisions with section 12 of the present trade-mark act.

The provisions of section 27 are taken substantially from section 11 of the act of Congress approved July 24, 1897, entitled "An act to provide revenue for the Government and to encourage the industries of the United States." Its provisions have been amended so as to give to manufacturers located in foreign countries—which, by treaty stipulations, give similar privileges to the United States—the same advantages as are given to domestic manufacturers.

Section 28 provides that it shall be the duty of the registrant of a trade-mark 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." If counterfeiting or imitation of a trade-mark is to subject the counterfeiter or imitator to the penalties by way of trebling of damages provided for under the provisions of the bill submitted herewith, then it seems entirely proper that some notice should be given to the public of the registration of the trade-mark. The provisions for such notice in the section referred to follow the language of the statutes on the subject of patents.

Section 29 defines the terms used in other sections of the bill, and by making such definition of the terms it has prevented considerable repetition in other parts of the bill.

Section 30 simply provides for the repeal of other acts inconsistent with the provisions of the bill submitted herewith and for the preservation of rights acquired by registrants under trade-mark laws now in force.

We have called attention in this report to such provisions of the bill as we thought might require some explanation. The sections in the bill submitted herewith which are not specifically referred to in this report are, we believe, self-explanatory.

It is believed by your committee that the passage of the proposed bill would give the relief which the owners and users of trade-marks are justly asking at the hands of Congress. The subject is one of vital importance to every manufacturer in the United States, as nearly all such manufacturers are engaged in interstate commerce. State laws afford protection for registered trade-marks used in interstate commerce, and with that subject Congress has nothing to do. The existing law, however, affords no protection to manufacturers using trade-marks in interstate commerce. Congress alone has power to pass legislation that will protect the use of marks in such commerce.

Your committee is of the opinion that Congress has the constitutional power to legislate upon the subject of trade-marks used in interstate commerce, and that the defects in existing law regulating such use of trade-marks will be remedied by the passage of the bill submitted herewith, and we therefore respectfully recommend that the bill do pass.



REGISTRATION OF TRADE-MARKS USED IN COMMERCE WITH FOREIGN NATIONS, ETC.

JANUARY 24, 1905.—Ordered to be printed.

Mr. KITTREDGE, from the Committee on Patents, submitted the following

REPORT.

[To accompany H. R. 16560.]

The Committee on Patents, to whom was referred the bill (H. R. 16560) 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, recommend that said bill do pass with the following amendments:

Amend said bill by striking out the word "facsimile" in line 3, page 3, of printed bill, and insert in lieu thereof the word "drawing."

Further amend said bill by striking out the word "trade," preceding the word "mark," in line 12, page 6, of the printed bill.

Further amend said bill by striking out the word "trade," preceding the word "mark," in line 13, page 6, of the printed bill.

Further amend said bill by striking out the word "and," at the end of line 15, page 6, of the printed bill.

Further amend said bill by striking out the word "lawful" at the beginning of line 16, page 6, of the printed bill.

Further amend said bill by striking out the word "five" preceding the word "dollars," in line 13, page 12, of the printed bill, and insert in lieu thereof the word "ten."

Further amend said bill by striking out the words "upon its passage" in line 14, page 20, of the printed bill, and insert in lieu thereof "April 1, 1905."

The able report upon this bill submitted to another body is adopted by your committee and presented herewith.



House Report No. 3147, Fifty-eighth Congress, third session.

Mr. BONYNGE, from the Committee on Patents, submitted the following

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[To accompany H. R. 16560.]

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The subject-matter of the bill, which is herewith reported, has been in one form or another before the Congress of the United States at practically every session since 1870. At that time an act was passed entitled "An act to revise, consolidate, and amend the statutes relating to patents and copyrights." The said act sought to establish a regulation of trade-marks applicable to all trades, and was not confined in its terms to a regulation of commerce between the States, or with foreign nations or Indian tribes. At the time of the passage of the act in question it was apparently the opinion of Congress that protection to trade-marks was an exercise of the power granted to Congress by the eighth paragraph of section 8 of Article I of the Constitution, providing that Congress shall have power "To promote the progress of science and useful arts by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries."

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the Supreme Court of the United States in a case reported in the October term of that court, 1879, known as the trade-mark cases, 100 U. S., 82. In that case it was held by the court that the law in question could not be supported as an exercise of the power given to Congress by clause 8 of section 8 of Article I of the Constitution, for the reason that the exclusive right to a trade-mark does not depend upon novelty, invention, discovery, or any work of the brain, and that the right to the use of a trade-mark was founded solely on priority of appropriation. It was further held in the same case that the law could not be supported as an exercise of the power given to Congress to regulate foreign commerce, or commerce among the several States, or with the Indian tribes, because by its terms it was not so limited, and as the court was unable to separate the good from the bad without creating a new law, the whole statute was declared by the court to be unconstitutional.

The decision above referred to created great disturbance among manufacturers, and Congress was flooded with proposed new legislation on the subject, even including a resolution for an amendment to the Constitution of the United States granting to Congress express power to regulate the use of trade-marks. Finally the present act regulating the use of trade-marks was passed and approved March 3, 1881. The law, as it now stands, is confined in its provisions to commerce with foreign nations and with the Indian tribes. It does not seek to regulate the use of trade-marks used in interstate commerce. The report of the committee upon the present act shows that at that time Congress was of the opinion that the power to legislate upon the subject of trade-marks came within the treaty-making power, and was not based at all upon the power given to Congress by the commerce clause of the Constitution. For that reason the provisions of the act now upon the statute books relate solely to commerce with foreign nations and with Indian tribes.

The United States is a member of the union created by the convention for the protection of industrial property concluded at Paris, March 20, 1883, of which the other members are Belgium, Brazil, Denmark, Dominican Republic, France, Great Britain, Italy, Japan, Netherlands, Norway, Portugal, Spain, Servia, Sweden, Switzerland, and Tunis.

The United States has also made separate treaties, conventions, and declarations, relating in whole or in part to trade-marks, with Austria, Hungary, Belgium, Brazil, Denmark, France, Germany, Great Britain, Italy, Japan, Russia, Servia, and Spain. By these various conventions and treaties the United States has assumed certain obligations relating to the regulation of trade-marks, many of which we have not, up to this time, observed.

By an act approved June 4, 1898, commissioners were appointed by the President to revise and amend the laws of the United States concerning trade and other marks, so far as the same relate to matters which are contained in or are affected by the convention for the protection of industrial property concluded at Paris, March 20, 1883, which is referred to above, and to the treaties of the United States and laws of other nations relating to trade or other marks, and trade or commercial names. The committee thus appointed by the President consisted of Mr. Francis Forbes, Mr. Peter Stenger Grosscup, and Mr. Arthur P. Greeley. They made a very elaborate and exhaustive report upon the



subject of trade-marks and patents, which was published as Document No. 20, Fifty-sixth Congress, second session. The commissioners thus appointed also prepared a bill, which was submitted with their report, revising and amending the trade-mark laws of the United States, but up to the present time there has been no amendment of the act approved in 1881.

Your committee has carefully examined the report of the commissioners above-named, and the provisions of the bill proposed by them, in connection with the provisions of the various bills on the same subject referred to your committee, and after such examination it is the unanimous opinion of your committee that the bill submitted herewith would be constitutional legislation, and would so amend the trade-mark laws of the United States as to conform to our treaty obligations with the other nations.

THE CONSTITUTIONAL QUESTION.

The first question presented to the Committee for its consideration was whether Congress has Constitutional power to regulate the use of trade-marks.

There is no express reference to trade-marks in the constitution of the United States, nor any express authority given by the constitution to legislate upon this subject. At the time of the adoption of the Constitution the subject of trade-marks was not recognized as one of importance to the commerce of the United States, either internal or foreign. There had been only three reported cases involving the right to the use of a trade-mark reported in Great Britain prior to that time. The first reported case in the United States upon the subject was in 1837. The first statute of Great Britain upon the subject was adopted in 1862. The law of trade-marks is therefore of recent origin and growth. Its growth has been very rapid within the past fifty years, and at the present time a large majority of the states in the union have statutes regulating the registration and the use of trade-marks.

We have heretofore in this report given a brief reference to the legislation upon the subject of trade-marks passed by the Congress of the United States.

If Congress has the power to pass the legislation proposed, it must, in the opinion of your committee, be under the clause of section 8 of Article I of the Constitution, which gives to Congress power to regulate commerce with foreign nations, among the several States, and with the Indian tribes. Your committee, after careful study and investigation, are of the opinion that Congress has such power. This precise question has not been presented to the Supreme Court of the United States. In the trade-mark case above referred to (100 U. S., 82) the court expressly refused to pass upon this question. The exact language of the court was as follows:

The question, therefore, whether the trade-mark bears such a relation to commerce in general terms as to bring it within Congressional control, when used or applied to the classes of commerce which fall within that control, is one which, in the present case, we propose to leave undecided. We adopt this course because when this court is called on in the course of the administration of the law to consider whether an act of Congress, or any other department of the Government, is within the constitutional authority of that department, a due respect for a coordinate branch of the Government requires that it shall decide that it has transcended its powers only when that is so plain that we can not avoid the duty.



The act of 1881 has been before the courts of the United States in many cases, but the question of its constitutionality has never been raised or discussed. We therefore have no decision of the Federal courts settling the proposition now under consideration. We are consequently obliged to determine the question for ourselves upon an independent investigation, being governed in that investigation by decisions of the Supreme Court upon somewhat similar cases and the language used by the court in various cases involving the power given to Congress under the commerce clause of the Constitution.

While it is true that there is no express provision in the Constitution, giving this particular power to Congress, for the reason that the subject was one not then regarded as of importance, it does not follow that Congress has not this power. As was said in the Debs case (158 U. S., 564):

Constitutional provisions do not change, but their operation extends to new matters as the modes of business and the habits of life of the people vary with each succeeding generation. * * * The Constitution has not changed. The power is the same. But it operates to-day upon modes of interstate commerce unknown to the fathers, and it will operate with equal force upon any new modes of such commerce which the future may develop.

The real question to be determined is whether trade-marks bear such a relation to commerce in general as to bring them within Congressional control, and whether the law providing for the registration of trade-marks used in foreign and interstate commerce and commerce with the Indian tribes is a regulation of such commerce. That a trade-mark is generally accepted as bearing a very close relation to commerce is evident from its name, its origin, its history, and the legislation upon the subject of trade-marks in nearly all the States of the Union and the leading commercial nations of the world. The first suggestion for Federal legislation upon the subject was contained in a petition presented to the Second Congress by certain manufacturers of Boston, asking that they be given the exclusive right to the use of certain marks for the designation of their goods. Upon that petition Thomas Jefferson, then Secretary of State, made a report, in which he recommended the adoption of Federal legislation upon the subject, and used this language:

That it will, therefore, be reasonable for the General Government to provide in this behalf by law for those cases of manufacture generally, and those only, which relate to commerce with foreign nations and among the several States and with the Indian tribes—

showing conclusively that he based his opinion that Congress had power to legislate upon the subject upon the commerce clause of the Constitution. There is no right to the use of a trade-mark which is separate and distinct from its application to goods used in commerce. There can be no ownership of a trade-mark which is not applied to goods and merchandise used in commerce. It bears in many respects a striking resemblance to the good will of a business. In all of the early cases upon the subject of trade-marks, commencing with the first case, that of *Blanchard v. Hill*, in 1742, the close relationship of trade-marks to commerce has been recognized by all of the courts. Every commercial nation of the world of any importance has a law regulating the registration and protection of trade-marks. We conclude, therefore, that the use of a trade-mark bears a very close and intimate relation to commerce.



We are then confronted with the next question, whether under the term "commerce," as used in the Constitution, we can include trade-marks. The Supreme Court of the United States has in many cases given a very liberal construction to the use of the term "commerce." The first and leading case upon the commerce clause of the Constitution is that of *Gibbons v. Ogden*, reported in 9 Wheaton, at page 1. In that case Mr. Daniel Webster was one of the attorneys, and in the course of his argument he recited the history of the commerce clause in the Constitution, and showed that one of the immediate objects of the convention to form a constitution was the necessity of having uniform regulations of commerce. The case itself involved the constitutionality of the law of New York granting to Robert R. Livingston and Robert Fulton the right to the exclusive navigation of all the waters within the jurisdiction of that State, with boats moved by fire or steam, for a term of years. Mr. Webster contended, and satisfied the court, that the people intended by the provision of the Constitution in question to transfer from the several States to a general government those high and important powers of commerce which, in their exercise, were necessary to maintain a uniform and general system.

Chief Justice Marshall delivered the opinion of the court, in which he held that the commerce clause of the Constitution should not have a strict or narrow construction which would cripple the Government and render it unequal to the objects for which it had been established. He further held that the object for which the power was given should be considered in determining its extent. We find in that opinion the following definition of "commerce:"

Commerce, undoubtedly, is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. * * * It has been truly said that commerce, as the word is used in the Constitution, is a unit, every part of which is indicated by the term. * * * The power is to regulate—that is, to prescribe the rules by which commerce is to be governed.

Mr. Justice Johnson delivered a separate opinion in the same case, in which he said:

Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange, become commodities, and enter into commerce; the subject, the vehicle, the agent, and their various operations, become the objects of commercial regulation.

A few years later, in the case of *Brown v. Maryland* (12 Wheaton, 419), Chief Justice Marshall was again called upon to construe the commerce clause of the Constitution. In that opinion he expressed, even more strongly than in the previous case, the fact that one of the principal objects for the formation of a constitution was to give to one legislative body the power to regulate commerce with foreign nations and among the several States, and he used this language:

It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce, and all commerce among the States. To construe the power so as to impair its efficacy would tend to defeat an object, on the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity.

A number of other cases might be cited giving the judicial construction of the clause of the Constitution now under consideration; but we pass without reference to them to a very recent case, that of the



Addyston Pipe and Steel Co. v. United States (175 U. S., 211). In that case the court held:

Interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities. But upon the matter of interstate and foreign commerce and the proper regulation thereof, the subject being not alone national but international in its character, the great importance of having but one source for the law which regulates that commerce throughout the length and breadth of the land can not in our opinion be overestimated. Each State in that event would have complete jurisdiction over the commerce which was wholly within its own borders, while the jurisdiction of Congress, under the provisions of the Constitution, over interstate commerce would be paramount, and would include therein jurisdiction over contracts of the nature we have been discussing.

The court further said:

The power to regulate commerce means the power to prescribe rules by which it shall be governed.

It was also said in the case of *Gloucester Ferry Co. v. Pennsylvania* (114 U. S., 196):

Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities. The power to regulate that commerce as well as commerce with foreign nations vested in Congress is the power to prescribe the rules by which it shall be governed; that is, the conditions upon which it shall be conducted; to determine when it shall be free and when subject to duties and other exactions.

And in *Champion v. Ames* (188 U. S., 321) it was held that an act of Congress prohibiting the transportation of lottery tickets from one State to another was a regulation of interstate commerce.

We have thus seen that the use of trade-marks bears a very close relationship to commerce; that the trade-mark is only of value where it is attached to a subject of commerce—that is, to goods or merchandise which are to be used in commerce. We have further seen that Congress has the power to regulate—that is, to prescribe the rules which shall govern certain kinds of commerce. We confidently submit that the regulation of a trade-mark comes within the power to prescribe the rules by which commerce shall be governed and controlled. Congress, however, is limited in its regulation of commerce, by the express language of the Constitution, to commerce with foreign nations, among the several States, or with the Indian tribes, and its power over that subject is full, complete, and exclusive.

Having determined that Congress has the constitutional power to enact legislation upon the subject of trade-marks used in the commerce which comes within the jurisdiction of Congress, we now pass to a consideration of the provisions of the bill herewith submitted.

THE BILL.

The main objects sought to be accomplished by the bill herewith reported are, first, to make provision for the registration of trade-marks used in interstate commerce, as well as those used in foreign commerce, and in commerce with the Indian tribes; second, to provide a procedure which will give uniformity to the laws governing the registration of trade-marks; third, to provide additional penalties for the infringement of a registered trade-mark; fourth, to reduce the fee required on filing an application for the registration of a trade-mark;



fifth, to regulate the procedure for the registration of a trade-mark governing cases of interfering or conflicting claims to the use of trade-marks; sixth, to make our statutes conform to treaty stipulations entered into between the United States and certain other governments.

The first section of the bill provides for the registration of trade-marks used in interstate commerce, as well as in commerce with foreign nations and with Indian tribes, and provides for a reduction of the amount of the fee required for the registration of a trade-mark from \$25 to \$10.

The second, third, and fourth sections of the proposed bill relate to the procedure for the registration of trade-marks.

As little change as possible throughout the bill has been made in the existing law. Only such changes as were necessary to make the law agree with our treaty obligations, or to accomplish the purposes of the proposed amendments, have been made. The language of the present act has been retained throughout the bill in every case where it was possible to do so.

In the past there has been considerable complaint in regard to what could be registered under the existing law as a trade-mark. Much of the time of the committee in the hearing of the bill has been consumed in a discussion upon this particular feature of the legislation. Section 5 of the proposed bill we believe will permit the registration of all marks which could, under the common law as expounded by the courts, be the subject of a trade-mark and become the exclusive property of the party using the same as his trade-mark.

The language of section 5 is taken almost verbatim from section 5 of the bill proposed by Mr. Arthur P. Greeley, as contained in the report of the Commissioners appointed to revise the statutes relating to patents, trade and other marks, and trade and commercial names, under the act of Congress approved June 4, 1894. Full protection is given by the court, under the doctrine of unfair competition, to the users of such marks as do not, under the common law, constitute technically what is known as a trade-mark, and which can become the subject of exclusive ownership. By other sections of the bill, to which attention will be called later, provision is made for an appeal from the decision of the Commissioner of Patents to the district court of the District of Columbia from a decision refusing the registration of a trade-mark. By these provisions of the bill it would seem that there could not be a conflict of decisions, about which so much complaint has been made in the past. Through the decisions of the courts a uniform system and uniform rules governing and controlling the registration of marks will in time be adopted.

A proviso has been added permitting all marks that have been in actual use as trade-marks for a period of ten years to be registered.

The procedure provided by the bill for the registration of trade-marks is similar in many respects to the procedure in patent cases. When the application for registration is filed section 6 provides for an examination of the mark offered for registration. If upon such examination the application is refused, notice is given to the applicant, in order that he may appeal, if he so desires, from the decision. The procedure for appeals is regulated by other sections of the bill. If, on the other hand, the examination discloses that the mark is entitled to registration, then the act provides that the Commissioner shall cause



the mark to be published at least once in the Official Gazette of the Patent Office. The purpose of this publication is apparent. Owners of trade-marks ought not to have their rights to the use of a trade-mark jeopardized by the registration of similar trade-marks by other parties not entitled to the use of the same. Some notice should be given whereby the true owners of marks may have an opportunity to be heard by the Commissioner of Patents before any mark is registered and given, by reason of such registration, the evidence of ownership provided for by the terms of the bill.

By section 7 provision is made for proceedings in case of notice of opposition to the registration of a mark, and also where an interference exists between a trade-mark offered for registration and one already registered or a known trade-mark in use.

An appeal is also provided by section 8 from the examiner in charge of trade-marks, or the examiner in charge of interferences, to the Commissioner in person.

A further appeal is provided by section 9 from the decision of the Commissioner of Patents to the court of appeals of the District of Columbia, and the same rules and procedure for such appeals are adopted as those which control appeals from the decision of the Commissioner on an application for a patent or parties to an interference as to an invention.

Section 10 provides for the assignment of trade-marks either before or after registration, but requires that such assignment shall only be valid when made in connection with the good will of the business in which the mark is used and when recorded within three months from the date thereof.

Section 11 is almost identical with section 4 of the act of 1881, except that section 11 of the bill submitted herewith provides that the certificate of registration shall be under the seal of the Patent Office instead of under the seal of the Department of the Interior. The certificates are to be issued by the Commissioner of Patents, who should attach his seal, which is under his control, rather than the seal of the Department of the Interior.

By section 12 of the bill submitted herewith the life of a certificate of registration is changed from thirty years to twenty years. The purpose of this change is to make the term of such registration correspond with the term for which registration is granted by the international union for the registration of trade-marks. The right to the use of a trade-mark is perpetual, so long as the same is actually used in commerce. Such perpetual ownership of a mark is provided for by means of renewals of certificates, upon application made in accordance with the terms of the proposed bill.

By section 13 provision is made for the cancellation of registration of marks which may not have been entitled to registration. The only notice which is required, according to the provisions of the bill, of the application for the registration of a trade-mark is the publication of the application once in the Official Gazette. The purpose of this provision is to give to the owner of a mark an opportunity to have a prior registration of his mark, if granted, canceled upon a proper showing.

By sections 14 and 15 provision is made for the payment of fees, and such provisions are taken largely from similar regulations in regard to fees upon applications for a patent.



A remedy at law is given to the owners of trade-marks by section 16. The provision contained in this section to give the court power to enter a judgment on a verdict for three times the amount of the verdict, in such cases as the court may deem it advisable, is new in the law of trade-marks. Similar provisions exist in the copyright and patent laws and in other statutes. The difficulty of proving exact damages in cases of this character is well understood. It has seemed to your committee proper that the Government, which has made provision for the registration of trade-marks, should accord to the owners thereof, who have complied with the terms of the statute, full and complete redress for violation of their rights. By another section of the bill provision is made for designating registered trade-marks by printing under the trade-mark the fact that it is registered, as is done in cases of patents, so that any person who imitates or counterfeits a trade-mark will do so with notice and should therefore be held to a strict accountability for the fraud committed.

Section 17 defines what United States courts shall have jurisdiction of suits involving the rights to registered trade-marks.

Section 18 provides that writs of certiorari may be granted by the Supreme Court of the United States for the review of cases arising under this act, which section is taken from the Federal statute relating to patents.

By section 19 provision is made for proceedings in equity against the infringer of a registered trade-mark. This section corresponds in terms with section 4921 of the Revised Statutes relating to patent cases, except that it specially provides the manner in which profits shall be ascertained. Under existing rules it is necessary for the complainant to prove sales and costs with entire and absolute accuracy. The only persons having knowledge of the cost of making the sales are the defendant or some one in his employ. It has seemed, therefore, only fair and just that if the complainant proves the sales, the defendant should be required to produce evidence of the expenses he was put to in making such sales as an offset against the sales proven by the complainant.

The provisions of section 20 are taken from section 4966 of the Revised Statutes relative to copyrights and are equally applicable, or should be, to trade-marks as to copyrights.

Section 21 is practically the same as section 8 of the present trade-mark act. The only change in the section as now drawn relates to trade-marks which have been abandoned.

Section 22 provides for the cancellation of certificates of registration which have been granted to applicants who are subsequently found not to be the owners of the marks. This section provides only for the cancellation of trade-marks which are in conflict with other registered trade-marks. Section 13 of the proposed bill provides that any person, whether the owner of any registered trade-mark or not, who may deem himself injured by the registration of a mark, may make application to the Commissioner of Patents to cancel the registration thereof, and proceedings are provided for any such case protecting the rights of the registrant of the mark.

Section 23 is identical with section 10 of the act of 1881 on the subject of trade-marks, and is intended to give the user of a commercial mark, whether such mark comes within the technical definition of a trade-mark under the provisions of the proposed act the right to have



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such remedy against those who make use of such mark with fraudulent intent, as is given by the courts under the doctrine of unfair competition, and to further provide that the courts of the United States shall continue to have such jurisdiction as they now have to enforce relief in such cases.

The provisions of section 24 are believed to be self-explanatory.

Section 25 is identical in its provisions with section 9 of the present trade-mark act.

Section 26 is identical in its provisions with section 12 of the present trade-mark act.

The provisions of section 27 are taken substantially from section 11 of the act of Congress approved July 24, 1897, entitled "An act to provide revenue for the Government and to encourage the industries of the United States." Its provisions have been amended so as to give to manufacturers located in foreign countries—which, by treaty stipulations, give similar privileges to the United States—the same advantages as are given to domestic manufacturers.

Section 28 provides that it shall be the duty of the registrant of a trade-mark 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." If counterfeiting or imitation of a trade-mark is to subject the counterfeiter or imitator to the penalties by way of trebling of damages provided for under the provisions of the bill submitted herewith, then it seems entirely proper that some notice should be given to the public of the registration of the trade-mark. The provisions for such notice in the section referred to follow the language of the statutes on the subject of patents.

Section 29 defines the terms used in other sections of the bill, and by making such definition of the terms it has prevented considerable repetition in other parts of the bill.

Section 30 simply provides for the repeal of other acts inconsistent with the provisions of the bill submitted herewith and for the preservation of rights acquired by registrants under trade-mark laws now in force.

We have called attention in this report to such provisions of the bill as we thought might require some explanation. The sections in the bill submitted herewith which are not specifically referred to in this report are, we believe, self-explanatory.

It is believed by your committee that the passage of the proposed bill would give the relief which the owners and users of trade-marks are justly asking at the hands of Congress. The subject is one of vital importance to every manufacturer in the United States, as nearly all such manufacturers are engaged in interstate commerce. State laws afford protection for registered trade-marks used in interstate commerce, and with that subject Congress has nothing to do. The existing law, however, affords no protection to manufacturers using trade-marks in interstate commerce. Congress alone has power to pass legislation that will protect the use of marks in such commerce.

Your committee is of the opinion that Congress has the constitutional power to legislate upon the subject of trade-marks used in interstate commerce, and that the defects in existing law regulating such use of trade-marks will be remedied by the passage of the bill.

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REGISTRATION OF TRADE-MARKS.

FEBRUARY 7, 1905.—Ordered to be printed.

Mr. CURRIER, from the committee of conference, submitted the following

REPORT.

[To accompany H. R. 16560.]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 16560) 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, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 5, and 6.

That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment as follows: In lieu of matter inserted by the said amendment, insert the following: *and exclusive*, and strike out the words "prior to" in line 17 on page 6, and insert in lieu thereof the words *next preceding*, and the Senate agree to the same.

FRANK D. CURRIER,
ROBT. W. BONYNGE,
E. Y. WEBB,

Managers on the part of the House.

A. B. KITTREDGE,
LOUIS E. MCCOMAS,
S. R. MALLORY,

Managers on the part of the Senate.

STATEMENT ON THE PART OF THE MANAGERS OF THE HOUSE.

The managers on the part of the House, at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 16560) 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, submit the following written statement in explanation of the effect of the action agreed upon, and recommended in the accompanying conference report as to each of the Senate amendments:

On amendment No. 1, the word "drawing" is substituted by the Senate amendment for the word "facsimile" as the bill passed the House, and is self-explanatory.

On amendments Nos. 2 and 3, the word "mark" is substituted in each instance for the word "trade-mark" in the bill as it passed the House for the reason that the use of the word "trade-mark" in this connection would not have accomplished the purposes of the proviso of the section in question.

On amendment No. 4 the words "and lawful" were stricken out by the Senate amendment, and by the conference report it is recommended that the words "and exclusive" be substituted therefor. The purpose of this amendment is to prohibit the registration of any marks which are not technical trade-marks, unless the applicant has used such mark exclusively for the period of ten years. The words "next preceding" are inserted in place of the words "prior to" the passage of the act, so as to require the exclusive use of the mark for the ten years immediately preceding the passage of this act.

On amendment No. 5, the fee for renewal of registration is increased from \$5 to \$10.

On amendment No. 6, the date when the act is to take effect is made April 1, 1905, instead of upon its passage.

FRANK D. CURRIER,
ROBT. W. BONYNGE,
E. Y. WEBB,

Managers on the part of the House.

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BONYNGE, Robert William, (1863 - 1939)

BONYNGE, Robert William, a Representative from Colorado; born in New York City September 8, 1863; attended the public schools; was graduated from the College of the City of New York in 1882 and from the law department of Columbia College, New York City, in 1885; was admitted to the bar in 1885 and commenced practice in New York City; moved to Denver, Colo., in 1888 and continued the practice of law; member of the State house of representatives in 1893 and 1894; unsuccessful candidate for election in 1900 to the Fifty-seventh Congress; contested the election to the Fifty-eighth Congress of John F. Shafroth, who in an address before the House of Representatives conceded his defeat and withdrew from the contest; reelected as a Republican to the Fifty-ninth and Sixtieth Congresses and served from February 16, 1904, until March 3, 1909; unsuccessful candidate for reelection in 1908 to the Sixty-first Congress; member of the National Monetary Commission 1908-1912; resumed the practice of law in Denver, Colo.; moved to New York City in November 1912 and continued the practice of law; chief counsel of the New York State Industrial Commission 1916-1918; appointed United States agent before the Mixed Claims Commission (United States and Germany) in 1923 and before the Tripartite Claims Commission (United States, Austria, and Hungary) in 1927; died in New York City, September 22, 1939; interment in Woodlawn Cemetery.

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