

H. R. 11672.

IN THE HOUSE OF REPRESENTATIVES.

FEBRUARY 3, 1904.

Mr. DENNY introduced the following bill; which was referred to the Committee on Patents and ordered to be printed.

A BILL

To revise the laws of the United States relating to trade-marks.

1 *Be it enacted by the Senate and House of Representa*
2 *tives of the United States of America in Congress assembled,*
3 That any person claiming to be the owner of a trade-mark
4 used in commerce among the several States or in commerce
5 with foreign nations or with the Indian tribes, provided such
6 person is domiciled within the territory of the United States,
7 and any person claiming to be the owner of a trade-mark,
8 who is located in any foreign country which, by treaty, con-
9 vention, or law, affords similar privileges to citizens of the
10 United States may, upon payment of the prescribed fees and
11 otherwise complying with the requirements of this Act, obtain
12 registration therefor.

13 SEC. 2. That before any owner of a trade-mark shall be
14 entitled to registration thereof he shall make application
15 therefor in writing to the Secretary of Commerce and Labor,



1 and shall file in the Department of Commerce and Labor a
2 statement, signed by him, specifying his name, domicile, and
3 citizenship, and the location of his industrial or commercial
4 establishment, the class or classes of merchandise and the par-
5 ticular description of goods comprised in such class to which
6 the particular trade-mark has been appropriated, a description
7 of the trade-mark itself, if considered necessary by the appli-
8 cant or required by the Secretary in the particular case, a
9 statement of the mode in which the trade-mark is applied to
10 goods, and a statement of the length of time during which it
11 has been used. With this statement shall be filed a facsimile
12 drawing of the trade-mark, signed by the applicant or his
13 attorney in fact, and such number of specimens of the trade-
14 mark as actually used, as may be required by the Secretary
15 of Commerce and Labor.

16 SEC. 3. That the application required by section two of
17 this Act, if made by the owner of a trade-mark domiciled
18 within the territory of the United States, shall be accompanied
19 by a written declaration, verified by the applicant, that he
20 believes himself to be the owner of the trade-mark sought to be
21 registered, and that no other person, firm, corporation, or asso-
22 ciation has a right to use such trade-mark, either in the iden-
23 tical form or in any such near resemblance thereto as might
24 be calculated to deceive; that such trade-mark is used in com-
25 merce among the several States or in commerce with foreign



1 nations or with the Indian tribes, and that the facsimile
2 drawing and specimens, if any, truly represent the trade-
3 mark sought to be registered. The application, if made by the
4 owner of a trade-mark located in a foreign country, shall be
5 accompanied by a written declaration, verified by the appli-
6 cant, that he believes himself to be the owner of the trade-
7 mark sought to be registered; that he has registered the
8 same, or has regularly filed an application for registration
9 thereof, in the foreign country in which he is located, of which
10 registration or application, as the case may be, he shall state
11 the date; that no other person, firm, corporation, or associa-
12 tion has the right to use such trade-mark, either in the iden-
13 tical form or in any such near resemblance thereto as might
14 be calculated to deceive, and that the facsimile drawings and
15 specimens, if any, truly represent the trade-mark sought to
16 be registered.

17 In case the owner of the trade-mark is a firm, corpora-
18 tion, association, State, or municipality, the declaration may
19 be made by a member of the firm or an officer of the corpora-
20 tion, association, State, or municipality.

21 The declaration required by this section may be made
22 before any person within the United States authorized by law
23 to administer oaths, or when the applicant resides in a foreign
24 country, before any minister, chargé d'affaires, consul, or



1 commercial agent holding commission under the Government
2 of the United States.

3 SEC. 4. That every applicant for the registration of a trade-
4 mark not domiciled in the United States shall, before the is-
5 suance of the certificate of registration, designate, by a notice
6 in writing filed in the Department of Commerce and Labor,
7 some person residing within the United States on whom proc-
8 ess or notice of proceedings affecting the right of ownership
9 in the trade-mark of which he may claim to be the owner,
10 brought under the provisions of this Act or under other laws
11 of the United States may be served with the same force and
12 effect as if served upon the applicant or registrant in person.

13 SEC. 5. That no mark by which the goods of the person
14 claiming to be the owner of the mark may be distinguished
15 from other goods of the same class shall be refused registra-
16 tion as a trade-mark on account of the nature of such mark,
17 unless such mark

18 (a) Consists of or comprises immoral or scandalous
19 matter.

20 (b) Consists of or comprises the flag or coat of arms or
21 other insignia of the United States, or any simulation thereof,
22 or of any State or municipality, or of any foreign nation.

23 *Provided*, That marks which are identical with a regis-
24 tered or known trade-mark in use by another, and appropri-
25 ated to the same class of merchandise, or which so nearly



1 resemble a registered or known trade-mark in use by another,
2 for the same class of merchandise, as to be likely to cause
3 confusion or mistake in the mind of the public, or to deceive
4 purchasers, shall not be registered: *And provided*, That
5 marks which consist merely in or include the name of an
6 individual, firm, corporation, or association, not written,
7 printed, impressed, or woven in some particular or dis-
8 tinctive manner, or which consist merely in words or devices
9 which are descriptive of the goods with which they are used,
10 or of the character or quality of such goods, or which consist
11 of the name of a locality, shall not be registered unless the
12 applicant for registration states in his application that he makes
13 no claim to the exclusive use of such portion of said mark as
14 against others who may use the same without fraudulent or
15 deceptive intent.

16 SEC. 6. That any application for registration of a trade-
17 mark filed in this country by any person who has previously
18 regularly filed in any foreign country which by treaty, con-
19 vention, or law affords similar privileges to citizens of the
20 United States, an application for the registration of the same
21 trade-mark shall be accorded the same force and effect as would
22 be accorded to the same application if filed in this country on
23 the date on which application for registration of the same
24 trade-mark was first filed in such foreign country, provided
25 such application is filed in this country within four months



1 from the date on which the application was first filed in such
2 foreign country.

3 SEC. 7. That on the filing of any application for regis-
4 tration of a trade-mark which complies with the requirements
5 of sections two and three of this Act, and the payment of the
6 fees required by this Act, the Secretary of Commerce and
7 Labor shall cause an examination thereof to be made; and if
8 on such examination it shall appear that the applicant is
9 entitled to registration under the provisions of this Act, the
10 Secretary shall issue a certificate of registration therefor.

11 SEC. 8. That whenever, on examination, an application
12 for registration of a trade-mark is refused, the Secretary shall
13 notify the applicant thereof, giving him briefly the reasons
14 for such refusal, together with such information and references
15 as may be useful in judging of the propriety of persisting in,
16 modifying, or abandoning his application; and if, after receiv-
17 ing such notice, the applicant persists in his claim of right to
18 registration, either with or without modifying his application,
19 his application shall be reexamined.

20 SEC. 9. That upon failure of the applicant to complete
21 his application for registration within one year after the filing of
22 any part thereof, or upon his failure to prosecute his applica-
23 tion within one year after any action therein, of which notice
24 shall have been given to the applicant, such application shall
25 be regarded as abandoned, unless it be shown to the satisfac-



1 tion of the Secretary that such delay was unavoidable; but
2 the abandonment of such application shall not be construed
3 to be an abandonment of any right to the trade-mark for the
4 registration of which such application was made.

5 SEC. 10. That whenever application is made for the reg-
6 istration of a trade-mark which is substantially identical with
7 a trade-mark appropriated to the same class of goods for which
8 a certificate of registration has been previously issued to an-
9 other, and is still in force, or for registration of which another
10 has previously made application, or which so nearly resembles
11 such trade-mark as, in the opinion of the Secretary, to be
12 likely to be mistaken therefor by the public, and the applicant
13 shall show, to the satisfaction of the Secretary, that he used
14 the trade-mark of his application prior to the date of filing
15 of the application on which such previous registration was
16 granted, or the date of filing of such prior application, as the
17 case may be, or shall show to the satisfaction of the Secre-
18 tary that the registrant or prior applicant has abandoned the
19 use of such trade-mark, the Secretary shall suspend such
20 later application and give notice thereof to the registrant or
21 prior applicant, as the case may be. If within such time, not
22 less than thirty days from such notice as the Secretary shall
23 prescribe, the registrant or prior applicant files in the Depart-
24 ment of Commerce and Labor notice of opposition to the grant
25 of such application, stating the reasons therefor, the Secretary



1 shall declare that an interference exists as to such trade-mark
2 and shall direct the examiner in charge of the case to deter-
3 mine the question of ownership of such trade-mark. And the
4 Secretary shall issue a certificate of registration to the party
5 who is adjudged to be the owner of the trade-mark, unless
6 the adverse party appeals from the decision of the examiner
7 within such time, not less than twenty days, as the Secretary
8 shall prescribe, and in case of an appeal the Secretary shall
9 issue the certificate of registration to the successful party, and
10 if the interference involve an application for registration and
11 certificate previously issued, and the decision be finally ren-
12 dered in favor of the applicant and against the registrant, the
13 certificate of registration previously issued shall be canceled.
14 If the registrant or prior applicant, after due notice, shall fail
15 to file notice of opposition within thirty days the Secretary
16 shall issue a certificate of registration to the later applicant.

17 SEC. 11. That every applicant for the registration of a
18 trade-mark or for the renewal of the registration of a trade-
19 mark whose application has been twice refused, and every
20 party to an interference as to a trade-mark, may appeal from
21 the decision of the examiner in charge of trade-marks to the
22 Secretary in person, having once paid the fee for such appeal.

23 SEC. 12. That if an applicant for registration of a trade-
24 mark, or such party to an interference as to a trade-mark, is
25 dissatisfied with the decision of the Secretary of Commerce



1 and Labor, he may appeal to the court of appeals of the Dis-
2 trict of Columbia on complying with the conditions required
3 in case of an appeal from the decision of the Commissioner
4 by an applicant for patent or a party to an interference as to
5 an invention

6 SEC. 13 That the Secretary of Commerce and Labor is
7 authorized to record in the Department of Commerce and
8 Labor the transfer of the property right in any registered
9 trade-mark, or in any trade-mark for which application for
10 registration has been made. But no such transfer of a trade-
11 mark shall be recorded unless it shall appear that such transfer
12 was made with, or as a part of, a transfer of the good will of
13 the business in which such trade-mark was used. Any transfer
14 of the good will of the business in which a particular trade-
15 mark is used shall be deemed a transfer of such trade-mark,
16 and may be recorded unless the parties thereto expressly stipu-
17 late to the contrary.

18 SEC. 14. That certificates of registration of trade-marks
19 shall be issued in the name of the United States of America,
20 under the seal of the Department of Commerce and Labor,
21 and shall be signed by the Secretary of Commerce and Labor,
22 and a record thereof, together with printed copies of the draw-
23 ings, statement of the applicant, and description, if any, shall
24 be kept in books for that purpose. The certificate shall state



1 the date on which the application for registration was deposited
2 in the Department of Commerce and Labor. Certificates of
3 registration of trade-marks may be issued to the assignee of
4 the applicant, but the assignment must first be entered of
5 record in the Department of Commerce and Labor. Written
6 or printed copies of any records, books, papers, or drawings
7 relating to trade-marks belonging to the Department of Com-
8 merce and Labor, and of certificates of registration authen-
9 ticated by the seal of the Department of Commerce and Labor
10 and certified by the Secretary or Assistant Secretary thereof,
11 shall be evidence in all cases wherein the originals could be
12 evidence; and any person making application therefor and
13 paying the fee required by law shall have certified copies
14 thereof.

15 SEC. 15. That a certificate of registration shall remain
16 in force for ten years, except that in case of trade-marks pre-
17 viously registered in a foreign country such certificate shall
18 cease to be in force on the date on which the trade-mark ceases
19 to be protected in such foreign country, and shall in no case
20 remain in force more than ten years, unless renewed. Cer-
21 tificates of registration may be, from time to time, renewed
22 for like periods on payment of the renewal fees required by
23 this Act, upon request by the registrant, his legal representa-
24 tives or transferees of record in the Department of Commerce
25 and Labor, provided such request is made prior to the expira-



tion of the term for which the certificates of registration were issued or renewed. Certificates of registration in force at the date at which this Act takes effect shall remain in force for the term for which they were issued, but shall be renewable on the same conditions and for the same periods as certificates issued under the provisions of this Act, and when so renewed shall have the same force and effect as certificates issued under this Act.

If, upon a showing satisfactory to the Secretary of Commerce and Labor, it shall appear that a trade-mark has been registered based upon false or fraudulent claim of ownership by the applicant, and that the applicant or registrant is not the owner thereof, the Secretary shall strike the said mark from the register and cancel the certificate of registration.

SEC. 16. That the following shall be the rates for trade-mark fees:

On filing each original application for registration of a trade-mark, ten dollars.

On filing each application for renewal of registration of a trade-mark, five dollars.

On an appeal for the first time from the examiner in charge of trade-marks to the Secretary of Commerce and Labor, ten dollars.

On an appeal for the first time from the decision of the examiner in charge of interferences, awarding ownership of a



1 trade-mark, to the Secretary of Commerce and Labor, fifteen
2 dollars.

3 For certified and uncertified copies of certificates of reg-
4 istration and other papers, and for recording transfers and
5 other papers, the same fees as required by law for such copies
6 of patents and for recording assignments and other papers
7 relating to patents.

8 SEC. 17. That sections forty-nine hundred and thirty-five
9 and forty-nine hundred and thirty-six, relating to the pay-
10 ment of patent fees and to the repayment of fees paid by
11 mistake, are hereby made applicable to trade-mark fees.

12 SEC. 18. That the Secretary of Commerce and Labor
13 may, from time to time, establish regulations not inconsistent
14 with law for the conduct of proceedings in reference to the
15 registration of trade-marks provided for by this Act.

16 SEC. 19. That the registration of a trade-mark under
17 the provisions of this Act shall be prima facie evidence of
18 ownership. Any person who shall, without the consent of
19 the owner thereof, reproduce, counterfeit, copy, or colorably
20 imitate any such trade-mark, and affix the same to merchan-
21 dise of substantially the same descriptive properties as those
22 described in the registration, or to labels, signs, packages,
23 wrappers, or receptacles intended to be used upon or in con-
24 nection with the sale of merchandise of substantially the same



1 descriptive properties as those described in such registration,
2 and shall use the same in commerce with a foreign nation,
3 or among the several States, or with the Indian tribes,
4 shall be liable to an action at law for damages therefor at
5 the suit of the owner thereof; and the party aggrieved shall
6 also have his remedy according to the course of equity
7 to enjoin the wrongful use of such trade-mark in foreign
8 commerce, or among the several States, or with the
9 Indian tribes, in any court having jurisdiction over
10 the person guilty of such wrongful act; and upon a decree
11 being rendered in any such case for an infringement, the
12 complainant shall be entitled to recover, in addition to the
13 profits to be accounted for by the defendant, the damages the
14 complainant has sustained thereby, and the court shall assess
15 the same, or cause the same to be assessed under its direction;
16 and whenever in any action a verdict is rendered for the
17 plaintiff, the court may enter judgment thereon for any sum
18 above the amount found by the verdict as the damages sus-
19 tained, according to the circumstances of the case, not ex-
20 ceeding three times the amount of such verdict, together with
21 costs. And in any case where a verdict has been found for
22 the plaintiff, or an injunction issued, the court may order the
23 delivery up and the destruction of all labels, signs, packages,
24 and so forth, upon which the defendant may have used the



1 trade-mark of the plaintiff, or complainant, or the colorable
2 imitation thereof.

3 SEC. 20. That any injunction that may be granted upon
4 hearing after notice to the defendant by any circuit court of
5 the United States, or by a judge thereof, restraining and en-
6 joining the infringement of any trade-mark registered under
7 the provisions of this act, may be served on the parties
8 against whom such injunction may be granted anywhere in
9 the United States, and shall be operative and may be enforced
10 by proceedings to punish for contempt or otherwise by any
11 other circuit court or judge in the United States. The circuit
12 courts or judges thereof shall have jurisdiction to enforce said
13 injunction, as herein provided, as fully as if the action were
14 pending or brought in the circuit in which said motion was
15 made.

16 The clerk of the court or judge granting the injunction
17 shall, when required so to do by the court hearing the appli-
18 cation to enforce said injunction, transmit without delay to
19 said court a certified copy of all the papers on which the said
20 injunction was granted that are on file in his office.

21 SEC. 21. That whenever a trade-mark, duly registered
22 under and in accordance with the provisions of this Act, shall
23 be used by the owner thereof in foreign commerce or in com-
24 merce among the several States or with the Indian tribes, any
25 person who shall, without the consent of the owner thereof,



1 apply such trade-mark or a counterfeit copy or deceptive imi-
2 tation thereof to merchandise of substantially the same class
3 or description as described in such registration in any State or
4 Territory into which merchandise lawfully bearing said regis-
5 tered trade-mark is imported, or from which it is exported,
6 or who shall apply such trade-mark to labels, signs, packages
7 wrappers, or receptacles intended to be used upon or in con-
8 nection with the sale of such merchandise in any such State
9 or Territory, or who shall knowingly sell or offer for sale in
10 any such State or Territory merchandise so marked, or such
11 labels, signs, packages, or receptacles intended to be used as
12 aforesaid, knowing such to be the intention, and who shall per-
13 sist in either of these acts after being notified of such registra-
14 tion and requested to desist therefrom, shall be deemed guilty
15 of contributing to impair the protection afforded by such trade-
16 mark in foreign or interstate commerce or in commerce with
17 the Indian tribes, and shall be liable to an action at law for
18 damages therefor at the suit of the owner thereof, and the
19 party aggrieved shall also have his remedy according to the
20 course of equity to enjoin such unlawful use of such trade-
21 mark and all the wrongful acts herein specified, in any court
22 having jurisdiction over the person guilty of such wrongful
23 acts; and the party aggrieved shall have the same remedy
24 for the violation of the provisions of this section as are pro-
25 vided in section nineteen for the violation of the provisions of



1 that section, and the same means of enforcement as therein
2 set forth. But no suit or action shall be maintained under
3 this section unless it appear that the party aggrieved, or his
4 lawful predecessor in title, was, within one year preceding
5 the suit or action, commercially using said trade-mark on or
6 in connection with merchandise of the class or description
7 specified imported into the States or Territories where such
8 wrongful act is committed, or exported therefrom, or in com-
9 merce with the Indian tribes.

10 SEC. 22. That whenever a trade-mark, duly registered
11 under and in accordance with the provisions of this Act, shall
12 be used by the owner thereof in foreign commerce among the
13 several States or with the Indian tribes, any person who
14 shall without the consent of the owner thereof, and with
15 intent to defraud, apply such trade-mark, or any counterfeit
16 copy or deceptive imitation thereof, to merchandise of sub-
17 stantially the same class or description as described in such
18 registration in any State or Territory into which this mer-
19 chandise lawfully bearing said registered trade-mark is im-
20 ported, or from which it is exported, or who shall, with
21 intent to defraud, apply such marks to labels, signs, ack-
22 ages, wrappers, or receptacles intended to be used upon or
23 in connection with the sale of said merchandise in any such
24 State or Territory, or who shall, with intent to defraud,
25 sell or offer for sale in any such State or Territory,



1 merchandise so marked, or such labels, signs, packages, or re-
 2 ceptacles intended to be used as aforesaid, knowing such to
 3 be the intention, and who shall persist in either of these acts
 4 after being notified of such registration and requested to de-
 5 sist therefrom, shall, upon conviction thereof, be punished by
 6 a fine of not more than five hundred dollars or by imprison-
 7 ment at hard labor for not more than one year, or by both
 8 such fine and imprisonment, in the discretion of the court.
 9 No person shall be liable under this section unless it appear
 10 that the offense has been committed in some State or Terri-
 11 tory where the registered trade-mark has within one year
 12 before such offense been lawfully used commercially on or in
 13 connection with merchandise of the class or description specified
 14 imported into such State or Territory, or exported therefrom,
 15 or in commerce with the Indian tribes.

16 SEC. 23. That writs of certiorari may be granted by the
 17 Supreme Court of the United States for the review of cases
 18 arising under this Act, in the same manner as provided for
 19 patent cases by the Act creating the circuit courts of appeals.

20 SEC. 24. That any person who, with intent to defraud,
 21 falsely makes, forges, reproduces, copies, or counterfeits, or
 22 colorably imitates, or causes or procures to be made, forged,
 23 reproduced, colorably imitated, copied, or counterfeited any
 24 trade-mark duly registered under the provisions of this Act,



1 knowing the same to be a colorable imitation or counterfeit of
2 such trade-mark, and who uses or causes the same to be used
3 in commerce with foreign nations, or among the several States,
4 or with Indian tribes, or who affixes the same or causes the
5 same to be affixed to merchandise of substantially the same
6 descriptive properties as those referred to in said registration
7 of such trade-mark, and who uses the same in commerce with
8 foreign nations, or among the several States, or with the In-
9 dian tribes, or who otherwise passes upon the public or utters
10 in commerce with foreign nations, or among the several States,
11 or with Indian tribes, any false, reproduced, copied, counter-
12 feited, or colorable imitation of such registered trade-mark,
13 knowing the same to be falsely made, forged, reproduced,
14 copied, counterfeited, or such colorable imitation, shall, upon
15 conviction thereof, be punished by a fine of not more than
16 five hundred dollars or by imprisonment at hard labor for not
17 more than one year, or by both such fine and imprisonment, in
18 the discretion of the court.

19 SEC. 25. That every person who, with intent to defraud,
20 shall deal in, or sell, or cause or procure the sale of, in com-
21 merce with foreign nations, or among the several States, or
22 with the Indian tribes, any merchandise or article of sub-
23 stantially the same descriptive properties as those referred to
24 in the registration of any trade-mark duly made under the
25 provisions of this Act, to which or to the package in which



1 the same is put up is fraudulently affixed such trade-mark, or
2 any counterfeit or colorable imitation thereof calculated to de-
3 ceive the public, knowing the same to be counterfeit or not
4 the genuine merchandise or article referred to in such regis-
5 tration, shall, on conviction thereof, be punished as prescribed
6 in section twenty-four of this Act.

7 SEC. 26. That every person who, with intent to defraud,
8 uses or affixes, or causes or procures to be fraudulently used
9 or affixed, any trade-mark duly registered under the provisions
10 of this Act, or any colorable imitation thereof calculated to
11 deceive the public, in, with, or to any merchandise or article
12 of substantially the same descriptive properties as those re-
13 ferred to in such registration, or to the package or inclosure
14 in which the same is put up, knowing the said trade-mark to
15 be counterfeit, or knowing the merchandise not to be the
16 genuine merchandise or article referred to in such registration,
17 and who sells or uses the same, or causes the same to be sold
18 or used in commerce with foreign nations, or among the
19 several States, or with the Indian tribes, shall, on conviction
20 thereof, be punished as prescribed in section twenty-four of
21 this Act.

22 SEC. 27. That every person who, with intent to defraud,
23 fills, or procures to be fraudulently filled, any package to which
24 is affixed any trade-mark duly registered under the provisions
25 of this Act, or any colorable imitation thereof calculated to



1 deceive the public, with any merchandise or article of sub-
2 stantially the same descriptive properties as those referred to
3 in such registration, knowing the said trade-mark to be
4 counterfeit, or knowing the merchandise not to be the genuine
5 merchandise or article referred to in such registration, and
6 sells, or uses, or offers for sale or use such counterfeit mer-
7 chandise in commerce with foreign nations, or among the
8 several States, or with the Indian tribes, shall, on conviction
9 thereof, be punished as prescribed in section twenty-four of
10 this Act.

11 SEC. 28. That any person who, with intent to injure or
12 defraud the owner of any trade-mark duly registered under
13 the provisions of this Act, or any other person lawfully entitled
14 to use or protect the same, shall, in commerce with a foreign
15 nation, or among the several States, or with the Indian tribes,
16 buy, sell, offer for sale, or deal in any used or empty box, en-
17 velope, wrapper, bottle, cask, case, or other package to which is
18 affixed, so that the same may be obliterated without substan-
19 tial injury to said box or other thing aforesaid, any such
20 registered trade-mark not so destroyed, defaced, erased, or
21 obliterated as to prevent its fraudulent use, shall, on conviction
22 thereof, be punished as prescribed in section twenty-four of
23 this Act.

24 SEC. 29. That any person who shall, with intent to de-
25 fraud any person or persons, knowingly or willfully aid in or



1 abet the commission of any of the offenses described in sec-
2 tions twenty-four, twenty-five, twenty-six, twenty-seven, and
3 twenty-eight of this Act, shall, upon conviction thereof, be
4 punished by a fine not exceeding two hundred and fifty dol-
5 lars or by imprisonment for not more than six months, or by
6 both such fine and imprisonment, in the discretion of the court.

7 SEC. 30. That the circuit courts of the United States and
8 the supreme court of the District of Columbia shall have
9 original jurisdiction, and the circuit courts of appeals of the
10 United States and the court of appeals of the District of
11 Columbia shall have appellate jurisdiction, both at law and in
12 equity and criminally, as the case may be, in all cases arising
13 under sections nineteen, twenty, twenty-one, twenty-two,
14 twenty-four, twenty-five, twenty-six, twenty-seven, twenty-
15 eight, and twenty-nine of this Act, without regard to the
16 amount in controversy or the citizenship of the parties.

17 SEC. 31. That no action or suit or criminal prosecution
18 shall be maintained under the provision of this Act in any case
19 when the trade-mark is used in any unlawful business or upon
20 any article injurious in itself, or which mark has been used
21 with the design or which has the effect of deceiving the public
22 in the purchase of merchandise, or under any certificate of
23 registration fraudulently obtained. In any action for infringe-
24 ment the defendant may plead the general issue, and, having
25 given notice in writing to the plaintiff or his attorney thirty



1 days before, may prove on trial any one of the following
2 special matters:

3 First. That the registration of the trade-mark on which
4 the suit is based was obtained by fraud and false representation.

5 Second. That the trade-mark on which this suit is based
6 is not the property of the plaintiff.

7 Third. That the defendant uses the mark in question
8 upon a different class of merchandise from that for which it
9 is registered.

10 Fourth. That the rights acquired by the registration
11 have been abandoned.

12 Fifth. That the acts complained of were committed by
13 the defendant with the plaintiff's full knowledge and consent;
14 and if any one or more of the special matters shall be found
15 for the defendant, judgment shall be rendered for him with
16 costs.

17 And the like defenses may be pleaded in any suit in
18 equity for relief against an alleged infringement, and proofs
19 of the same may be given upon like notice in the answer of
20 the defendant and with like effect, and in all criminal prose-
21 cutions the accused may plead the same defenses to the
22 indictment.

23 SEC. 32. That nothing in this Act shall prevent, lessen,
24 impeach, or avoid any remedy at law or in equity which any
25 party aggrieved by any wrongful use of any trade or other



1 mark, commercial name, or indication of locality of origin
2 might have had if the provisions of this Act had not been
3 passed.

4 SEC. 33. That nothing contained in this Act shall pre-
5 vent the registration as a trade-mark of any word or words,
6 letter, figure, or combination of letters or figures used as a
7 trade-mark in commerce among the several States, or in com-
8 merce with foreign nations, or with the Indian tribes before
9 the third day of March, eighteen hundred and eighty-one, and
10 which has distinguished the goods of the applicant or his
11 predecessor in business.

12 SEC. 34. That no article of imported merchandise which
13 shall copy or simulate the name of any domestic manufac-
14 ture or manufacturer or trader, or of any manufacturer or
15 trader located in any foreign country, which by treaty, con-
16 vention, or law affords similar privileges to citizens of the
17 United States, or which shall copy or simulate a trade-mark
18 registered in accordance with the provisions of this Act, or
19 shall bear a name or mark calculated to induce the public to
20 believe that the article is manufactured in the United States
21 or that it is manufactured in any foreign country or locality
22 other than the country in which it is in fact manufactured, shall
23 be admitted to entry at any custom-house of the United States.
24 And in order to aid the officers of the customs in enforcing
25 this prohibition any domestic manufacturer or trader and any



1 foreign manufacturer or trader who is entitled, under the pro-
2 visions of a treaty, convention, declaration, or agreement be-
3 tween the United States and any foreign country, to the ad-
4 vantages accorded by law to citizens of the United States in
5 respect to trade or commercial marks and commercial names
6 may require his name and residence and name or mark of the
7 locality in which his goods are manufactured and a copy of
8 the certificate of registration of his trade-mark issued in ac-
9 cordance with the provisions of this Act to be recorded in
10 books which shall be kept for this purpose in the Department
11 of the Treasury under such regulations as the Secretary of the
12 Treasury shall prescribe, and may furnish to the Department
13 facsimiles of his name, the name or mark of the locality in
14 which his goods are manufactured or of his registered trade-
15 mark; and thereupon the Secretary of the Treasury shall
16 cause one or more copies of the same to be transmitted to
17 each collector or other proper officer of the customs.

18 SEC. 35. That for the purpose of this Act the United
19 States shall be held to include and embrace all territory which
20 is under the jurisdiction and control of the United States;
21 and the word "States," as used in this Act, shall be held and
22 construed to include and embrace the District of Columbia,
23 the Territories of the United States, and such other territory
24 as shall be under the jurisdiction and control of the United
25 States; and "import" and "export" shall include goods



1 transported from one State or Territory of the United States
2 to another as well as goods transported from or to foreign
3 countries.

4 SEC. 36. That this Act shall take effect upon its passage.
5 All Acts and parts of Acts inconsistent with this Act are
6 hereby repealed, except so far as the same may apply to cer-
7 tificates of registration issued or applied for under the Act of
8 Congress approved March third, eighteen hundred and eighty-
9 one, entitled “An Act to authorize the registration of trade-
10 marks and protect the same,” or under the Act approved
11 August fifth, eighteen hundred and eighty-two, entitled “An
12 Act relating to the registration of trade-marks.”

H. R. 11672—4





58TH CONGRESS, }
2^D Session. } **H. R. 11672.**

A BILL

To revise the laws of the United States relating
to trade-marks.

By Mr. DENNY.

FEBRUARY 3, 1904.—Referred to the Committee on Patents
and ordered to be printed.