

# H. R. 15223.

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IN THE HOUSE OF REPRESENTATIVES.

APRIL 19, 1904.

Mr. CURRIER (by request) introduced the following bill; which was referred to the Committee on Patents and ordered to be printed.

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## A BILL

To authorize the registration of trade-marks and to protect the same.

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  
6       such person is domiciled within the territory of the United  
7       States, and any person claiming to be the owner of a trade-  
8       mark, who is located in any foreign country which, by  
9       treaty, convention, or law affords similar privileges to citizens  
10      of the United States, may, upon payment of the prescribed  
11      fees, and otherwise complying with the requirements of this  
12      Act, obtain registration therefor.

13       SEC. 2. That before any person claiming to be the  
14      owner of a trade-mark shall be entitled to registration thereof



1 he shall make application therefor in writing to the Commis-  
2 sioner of Patents, and shall file in the Patent Office a state-  
3 ment signed by him, specifying his name, domicile, and citi-  
4 zenship, and the location of his industrial or commercial  
5 establishment, the class of merchandise, and the particular  
6 description of goods comprised in such class to which the  
7 particular trade-mark has been appropriated; a statement of  
8 the mode in which the trade-mark is applied to goods, and a  
9 statement of the length of time during which it has been  
10 used. With this statement shall be filed a drawing of the  
11 trade-mark, signed by the applicant or his attorney in fact,  
12 and such number of specimens of the trade-mark as actually  
13 used as may be required by the Commissioner of Patents.

14       SEC. 3. That the application required by section two of  
15 this Act, if made by a person claiming to be the owner of a  
16 trade-mark, domiciled within the territory of the United States,  
17 shall be accompanied by a written declaration, verified by the  
18 applicant, that he believes himself to be the owner of the  
19 trade-mark sought to be registered; that such trade-mark is  
20 used by him in commerce among the several States, or in com-  
21 merce with foreign nations, or with the Indian tribes, and that  
22 the drawing and specimens, if any, truly represent the trade-  
23 mark sought to be registered. The application, if the appli-  
24 cant be located in a foreign country, shall be accompanied by  
25 a written declaration, verified by the applicant, that he be-

1 lieves himself to be the owner of the trade-mark sought to be  
2 registered; that he has registered the same or has regularly  
3 filed an application for registration thereof in the foreign  
4 country in which he is located, of which registration or appli-  
5 cation, as the case may be, he shall state the date; and that  
6 the drawing and specimens, if any, truly represent the trade-  
7 mark sought to be registered.

8       In case the applicant is a firm, corporation, association,  
9 State, or municipality, the declaration may be made by a  
10 member of the firm or an officer of the corporation, associa-  
11 tion, State, or municipality.

12       The declaration required by this section may be made  
13 before any person within the United States authorized by law  
14 to administer oaths, or, when the applicant resides in a for-  
15 eign country, before any minister, chargé d'affaires, consul,  
16 or commercial agent holding commission under the Gov-  
17 ernment of the United States, or before any notary public,  
18 judge, or magistrate having an official seal of the foreign  
19 country in which the applicant may be.

20       SEC. 4. That in case the applicant for registration of a  
21 trade-mark, or for renewal of registration of a trade-mark, is  
22 not domiciled in the United States he shall, before issuance  
23 of the certificate of registration, give the Commissioner of  
24 Patents an address for service in the United States, and the  
25 applicant or registrant shall thereafter notify the Commissioner



1 of Patents of any change in such address. Process or notice  
2 of any proceedings affecting the right of ownership of the  
3 trade-mark, brought under any of the provisions of this Act,  
4 may be served upon such applicant or registrant by leaving  
5 a copy of such process or notice, addressed to him, at the  
6 last address of which the Commissioner of Patents has been  
7 notified, with the same force and effect as if served upon the  
8 applicant or registrant in person.

9 SEC. 5. That no mark by which the goods of the per-  
10 son claiming to be the owner of the mark may be distin-  
11 guished from other goods of the same descriptive proper-  
12 ties shall be refused registration as a trade-mark on account  
13 of the nature of such mark, unless such mark

14 (a) Consists of or comprises immoral or scandalous matter ;

15 (b) Consists of or comprises the flag or coat of arms or  
16 other insignia of the United States or any simulation thereof,  
17 or of any State or municipality, or of any foreign nation :

18 *Provided*, That marks which are identical with a registered  
19 or known trade-mark owned and in use by another, and ap-  
20 propriated to goods of the same descriptive properties, or which  
21 so nearly resemble a registered or known trade-mark owned  
22 and in use by another and appropriated to goods of the same  
23 descriptive properties as to be likely to cause confusion or mis-  
24 take in the mind of the public or to deceive purchasers, shall  
25 not be registered, except as provided in section ten of this Act :



1 *And provided*, That certificate of registration shall not be issued  
2 for any mark for registration of which application has been  
3 filed by an applicant located in a foreign country, until such  
4 mark has been actually registered by the applicant in the  
5 country in which he is located.

6 SEC. 6. That an application for registration of a trade-  
7 mark filed in this country by any person who has previously  
8 regularly filed in any foreign country, which by treaty, conven-  
9 tion, or law affords similar privileges to citizens of the United  
10 States, an application for registration of the same trade-mark  
11 shall be accorded the same force and effect as would be  
12 accorded to the same application if filed in this country on  
13 the date on which application for registration of the same  
14 trade-mark was first filed in such foreign country: *Provided*,  
15 That such application is filed in this country within four  
16 months from the date on which the application was first filed  
17 in such foreign country.

18 SEC. 7. That on the filing of any application for regis-  
19 tration of a trade-mark which complies with the requirements  
20 of sections two and three of this Act, and the payment of the  
21 fees required by this Act, the Commissioner of Patents shall  
22 cause an examination thereof to be made; and if on such  
23 examination it shall appear that the applicant is entitled to  
24 registration under the provisions of this Act the Commissioner  
25 shall issue a certificate of registration therefor.

26 SEC. 8. That to facilitate the examination of applications

1 the Commissioner shall establish “classes of merchandise” on  
2 natural or trade lines, or both, and shall specify under each class  
3 examples of the particular goods comprised in such class. A  
4 single application shall not cover more than one class of mer-  
5 chandise, but may include all the particular goods in any one  
6 class on which the applicant is actually using the mark and  
7 must enumerate such goods in full.

8       SEC. 9. That whenever on examination an application  
9 for registration of a trade-mark is refused the Commissioner  
10 shall notify the applicant thereof, giving him the reasons for  
11 such refusal, together with such information and references as  
12 may be useful in judging of the propriety of persisting in,  
13 modifying, or abandoning his application; and if after receiv-  
14 ing such notice the applicant persists in his claim of right to  
15 registration, either with or without modifying his application,  
16 his application shall be reexamined.

17       SEC. 10. That whenever application is made for the reg-  
18 istration of a trade-mark which is substantially identical with  
19 a trade-mark appropriated to goods of the same descriptive  
20 properties, for which a certificate of registration has been pre-  
21 viously issued to another, or for registration of which another  
22 has previously made application, or which so nearly resembles  
23 such trade-mark as, in the opinion of the Commissioner, to  
24 be likely to be mistaken therefor by the public, and the ap-  
25 plicant shall show to the satisfaction of the Commissioner that



1 he used the trade-mark of his application prior to the date of  
2 filing of the application on which such previous registration  
3 was granted, or the date of filing of such prior application, as  
4 the case may be, or shall file a statement on information and  
5 belief duly verified that the registrant or prior applicant, as  
6 the case may be, has abandoned the use of such trade-mark,  
7 the Commissioner shall declare that an interference exists as  
8 to such trade-mark, and shall direct the examiner in charge  
9 of interferences to determine the question of the right of reg-  
10 istration of such trade-mark. And the Commissioner may  
11 issue a certificate of registration to the party who is adjudged  
12 to be entitled to registration of the trade-mark, unless the  
13 adverse party appeals from the decision of the examiner in  
14 charge of interferences within such time, not less than twenty  
15 days, as the Commissioner shall prescribe.

16 SEC. 11. That every applicant for the registration of a  
17 trade-mark, or for the renewal of the registration of a trade-  
18 mark, whose application is refused, and every party to an  
19 interference as to a trade-mark, may appeal from the decision  
20 of the examiner in charge of trade-marks, or of the examiner  
21 in charge of interferences, as the case may be, to the Commis-  
22 sioner 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 a party to an interference as to a trade-mark is  
25 dissatisfied with the decision of the Commissioner of Patents,



1 he may appeal to the court of appeals of the District of  
2 Columbia on complying with the conditions required in case  
3 of an appeal from the decision of the Commissioner by an ap-  
4 plicant for patent or a party to an interference as to an in-  
5 vention.

6       SEC. 13. That the Commissioner of Patents is authorized  
7 to record in the Patent Office any instrument in writing pur-  
8 porting to transfer the property right in any registered trade-  
9 mark or in any trade-mark for which application for registra-  
10 tion has been made.

11       SEC. 14. That certificates of registration of trade-marks  
12 shall be issued in the name of the United States of America  
13 under the seal of the Patent Office and shall be signed by  
14 the Commissioner of Patents, and a record thereof, together  
15 with printed copies of the drawing and statement of the appli-  
16 cant, shall be kept in books for that purpose. The certificate  
17 shall state the date on which the application for registration  
18 was deposited in the Patent Office. Certificates of registra-  
19 tion of trade-marks may be issued to the assignee of the ap-  
20 plicant, but the assignment must first be entered of record in  
21 the Patent Office. Written or printed copies of any records,  
22 books, papers, or drawings relating to trade-marks, belonging  
23 to the Patent Office, and of certificates of registration, au-  
24 thenticated by the seal of the Patent Office and certified by  
25 the Commissioner thereof, shall be evidence in all cases





1 wherein the originals could be evidence, and any person mak-  
2 ing application therefor and paying the fee required by law  
3 shall have certified copies thereof.

4       SEC. 15. That a certificate of registration shall remain  
5 in force for twenty years, except that in the case of trade-  
6 marks previously registered in a foreign country such certifi-  
7 cates shall cease to be in force on the date on which the  
8 trade-mark ceases to be protected in such foreign country,  
9 and shall in no case remain in force more than twenty years  
10 unless renewed. Certificates of registration may be from time  
11 to time renewed for like periods on payment of the renewal  
12 fees required by this Act upon request by the registrant, his  
13 legal representatives, or transferees of record in the Patent  
14 Office, and such request may be made at any time not more  
15 than six months prior to the expiration of the term for which  
16 the certificates of registration were issued or renewed. Cer-  
17 tificates of registration in force at the date at which this Act  
18 takes effect shall remain in force for the term for which they  
19 were issued, but shall be renewable on the same conditions  
20 and for the same periods as certificates issued under the pro-  
21 visions of this Act, and when so renewed shall have the same  
22 force and effect as certificates issued under this Act.

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

25       On filing each original application for registration of a  
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1 trade-mark, ten dollars: *Provided*, That any application for  
2 registration of a trade-mark pending at the date of the pas-  
3 sage of this Act, and on which certificate of registration shall  
4 not have issued at such date, may, at the option of the appli-  
5 cant, be proceeded with and registered under the provisions  
6 of this Act, without the payment of further fee.

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

9 On an appeal for the first time from the examiner in  
10 charge of trade-marks to the Commissioner of Patents, ten  
11 dollars.

12 On an appeal for the first time from the decision of the  
13 examiner in charge of interferences, determining the right of  
14 registration of a trade-mark, to the Commissioner of Patents,  
15 fifteen dollars.

16 For certified and uncertified copies of certificates of  
17 registration and other papers, and for recording transfers and  
18 other papers, the same fees as required by law for such copies  
19 of patents and for recording assignments and other papers  
20 relating to patents.

21 SEC. 17. That sections forty-nine hundred and thirty-  
22 five and forty-nine hundred and thirty-six of the Revised  
23 Statutes, relating to the payment of patent fees and to the  
24 repayment of fees paid by mistake, are hereby made ap-  
25 plicable to trade-mark fees.



1           SEC. 18. That the Commissioner of Patents may from  
2 time to time establish regulations not inconsistent with law  
3 for the conduct of proceedings in reference to the registration  
4 of trade-marks provided for by this Act.

5           SEC. 19. That the registration of a trade-mark under  
6 the provisions of this Act shall be prima facie evidence of  
7 ownership. Any person who shall, without the consent  
8 of the owner thereof, reproduce, counterfeit, copy, or  
9 colorably imitate any such trade-mark, and affix the same to  
10 merchandise of substantially the same descriptive properties  
11 as those set forth in the registration, or to labels, signs, prints,  
12 packages, wrappers, or receptacles intended to be used upon  
13 or in connection with the sale of merchandise of substantially  
14 the same descriptive properties as those set forth in such reg-  
15 istration, and shall use or shall have used such reproduction,  
16 counterfeit, copy, or colorable imitation in commerce among  
17 the several States, or with a foreign nation, or with the In-  
18 dian tribes, shall be liable to an action at law for damages  
19 therefor at the suit of the owner thereof; and whenever in  
20 any such action a verdict is rendered for the plaintiff the court  
21 may enter judgment thereon for any sum above the amount  
22 found by the verdict as the actual damages sustained, accord-  
23 ing to the circumstances of the case, not exceeding three times  
24 the amount of such verdict, together with the costs.

25           SEC. 20. That the circuit and territorial courts of the

1 United States and the Supreme Court of the District of  
2 Columbia shall have original jurisdiction, and the circuit courts  
3 of appeal of the United States and the court of appeals of  
4 the District of Columbia, shall have appellate jurisdiction, of  
5 all suits at law or in equity respecting trade-marks registered  
6 in accordance with the provisions of this Act, arising under  
7 the present Act, without regard to the amount in controversy.

8       SEC. 21. That writs of certiorari may be granted by the  
9 Supreme Court of the United States for the review of cases  
10 arising under this Act, in the same manner as provided for  
11 patent cases by the Act creating the circuit courts of appeal.

12       SEC. 22. That the several courts vested with jurisdiction  
13 of cases arising under the present Act, shall have power to  
14 grant injunctions according to the course and principles of  
15 equity to prevent the violation of any right of the owner of  
16 a trade-mark registered under this Act on such terms as the  
17 court may deem reasonable; and upon a decree being rendered  
18 in any such case for wrongful use of a trade-mark the com-  
19 plainant shall be entitled to recover, in addition to the profits  
20 to be accounted for by the defendant, the damages  
21 the complainant has sustained thereby, and the court  
22 shall assess the same or cause the same to be assessed  
23 under its direction; and the court shall have the same  
24 power to increase such damages, in its discretion, as is



1 given by section eighteen of this Act to increase the damages  
2 found by verdicts in actions at law.

3       SEC. 23. That in any case involving the right to a trade-  
4 mark registered in accordance with the provisions of this Act,  
5 in which a verdict has been found for the plaintiff or an in-  
6 junction issued, the court may order that all labels, signs,  
7 prints, packages, wrappers, or receptacles in the possession of  
8 the defendant bearing the trade-mark of the plaintiff or com-  
9 plainant, or any reproduction, counterfeit, or colorable imita-  
10 tion thereof, shall be delivered up and destroyed. Any in-  
11 junction that may be granted upon hearing, after notice to  
12 the defendant, to prevent the violation of any right of the  
13 owner of a trade-mark registered in accordance with the pro-  
14 visions of this Act, by any circuit court of the United States,  
15 or by a judge thereof, or by the supreme court of the District  
16 of Columbia, or by a judge thereof, may be served on the  
17 parties against whom such injunction may be granted any-  
18 where in the United States where they may be found, and  
19 shall be operative and may be enforced, by proceedings to  
20 punish for contempt or otherwise, by the court by which  
21 such injunction was granted or by any other circuit court or  
22 judge thereof in the United States, or by the supreme court  
23 of the District of Columbia or judge thereof. The said  
24 courts or judges thereof shall have jurisdiction to enforce said  
25 injunction, as herein provided, as fully as if the injunction



1 had been granted in the circuit in which it is sought to be  
2 enforced.

3 The clerk of the court or judge granting the injunction  
4 shall, when required to do so by the court before which ap-  
5 plication to enforce said injunction is made, transmit, without  
6 delay, to said court a certified copy of all the papers on which  
7 the said injunction was granted that are on file in his office.

8 SEC. 24. That whenever a trade-mark, duly registered  
9 under and in accordance with the provisions of this Act, shall  
10 be used by the owner thereof in commerce among the several  
11 States, or with a foreign nation, or with the Indian tribes, any  
12 person who shall, without the consent of the owner thereof, affix  
13 such trade-mark or a counterfeit copy or deceptive imitation  
14 thereof to merchandise of substantially the same descriptive  
15 properties as set forth in such registration in any State or Terri-  
16 tory into which merchandise lawfully bearing said registered  
17 trade-mark is imported, or from which it is exported, or who shall  
18 affix such trade-mark to labels, signs, prints, packages, wrappers,  
19 or receptacles intended to be used upon or in connection with  
20 the sale of such merchandise in any such State or Territory,  
21 or who shall knowingly sell or offer for sale in any such State  
22 or Territory merchandise so marked, or such labels, signs,  
23 prints, packages, wrappers, or receptacles intended to be used  
24 as aforesaid, knowing such to be the intention, and who shall  
25 persist in any of these acts after being notified of such registra-



1 tion and requested to desist therefrom, shall be deemed guilty  
2 of contributing to impair the protection afforded by such trade-  
3 mark in foreign or interstate commerce or in commerce with the  
4 Indian tribes, and shall be liable to an action at law for dam-  
5 ages therefor at the suit of the owner thereof, and the party  
6 aggrieved shall also have his remedy according to the course  
7 of equity to enjoin such unlawful use of such trade-mark and  
8 all the wrongful acts herein specified in any court having  
9 jurisdiction over the person guilty of such wrongful acts; and  
10 the party aggrieved shall have the same remedy for the vio-  
11 lation of the provisions of this section as is provided in sec-  
12 tions nineteen and twenty-two of this Act for the violation of  
13 the provisions of such sections, and the same means of en-  
14 forcement as therein set forth. But no suit or action shall be  
15 maintained under this section unless it appear that the party  
16 aggrieved, or his lawful predecessor in title, was, within one  
17 year preceding the suit or action, commercially using said  
18 trade-mark on or in connection with merchandise of the class  
19 or description specified imported into the States or Territories  
20 where such wrongful act is committed, or exported therefrom,  
21 or in commerce with the Indian tribes.

22       SEC. 25. That whenever there are interfering registered  
23 trade-marks, any person interested in any one of them may  
24 have relief against the interfering registrant, and all persons  
25 interested under him, by suit in equity against the said regis-

1 trant; and the court, on notice to adverse parties, and other  
2 due proceedings had according to the course of equity, may  
3 adjudge and declare either of the registrations void, in whole  
4 or in part, or invalid in any particular part of the United  
5 States, according to the interests of the parties in the trade-  
6 mark, and may order the certificate of registration to be deliv-  
7 ered up to the Commissioner of Patents for cancellation.

8       SEC. 26. That no action or suit shall be maintained under  
9 the provisions of this Act in any case when the trade-mark is  
10 used in any unlawful business or upon any article injurious in  
11 itself, or which mark has been used with the design of deceiv-  
12 ing the public in the purchase of merchandise, or has been  
13 abandoned, or under any certificate of registration fraudulently  
14 obtained.

15       SEC. 27. That nothing in this Act shall prevent, lessen,  
16 impeach, or avoid any remedy at law or in equity which any  
17 party aggrieved by any wrongful use of any trade-mark might  
18 have had if the provisions of this Act had not been passed.

19       SEC. 28. That no article of imported merchandise which  
20 shall copy or simulate the name of any domestic manufacture  
21 or manufacturer or trader, or of any manufacturer or trader  
22 located in any foreign country which by treaty, convention,  
23 or law affords similar privileges to citizens of the United  
24 States, or which shall copy or simulate a trade-mark regis-  
25 tered in accordance with the provisions of this Act, or shall



1 bear a name or mark calculated to induce the public to be-  
2 lieve that the article is manufactured in the United States, or  
3 that it is manufactured in any foreign country or locality  
4 other than the country or locality in which it is in fact manu-  
5 factured, shall be admitted to entry at any custom-house of  
6 the United States. And, in order to aid the officers of the  
7 customs in enforcing this prohibition, any domestic manufac-  
8 turer or trader, and any foreign manufacturer or trader  
9 who is entitled under the provisions of a treaty, conven-  
10 tion, declaration, or agreement between the United  
11 States and any foreign country to the advan-  
12 tages accorded by law to citizens of the United  
13 States in respect to trade-marks and commercial names, may  
14 require his name and residence and the name or mark of the  
15 locality in which his goods are manufactured, and a copy of  
16 the certificate of registration of his trade-mark issued in ac-  
17 cordance with the provisions of this Act, to be recorded in  
18 books which shall be kept for this purpose in the Department  
19 of the Treasury, under such regulations as the Secretary of  
20 the Treasury shall prescribe, and may furnish to the Depart-  
21 ment facsimiles of his name, the name or mark of the locality  
22 in which his goods are manufactured, or of his registered trade-  
23 mark; and thereupon the Secretary of the Treasury shall cause



1 one or more copies of the same to be transmitted to each col-  
2 lector or other proper officer of the customs.

3       SEC. 29. That in construing this Act the following rules  
4 must be observed, except when a contrary intent is plainly  
5 apparent from the context thereof: The United States in-  
6 cludes and embraces all territory which is under the jurisdic-  
7 tion and control of the United States; the word "States"  
8 includes and embraces the District of Columbia, the Territor-  
9 ies of the United States, and such other territory as shall be  
10 under the jurisdiction and control of the United States; the  
11 terms "person" and "owner," and any other word or term  
12 used to designate the applicant or other entitled to a benefit  
13 or privilege or rendered liable under the provisions of this  
14 Act, include a firm, corporation, association, State or munici-  
15 pality, as well as a natural person; the terms "applicant"  
16 and "registrant" embrace the successors and assigns of such  
17 applicant or registrant; the term "trade-mark" includes a  
18 symbol, name, commercial mark, indication of locality of  
19 origin, and any mark used on or in connection with articles  
20 of trade or merchandise, whether the product of manufacture  
21 or a natural product, to distinguish the goods of the alleged  
22 owner of the mark from other goods of the same class; and  
23 a trade-mark shall be deemed to be "affixed" to an article  
24 when it is placed in any manner in or upon either the article  
25 itself, or a box, bale, barrel, bottle, case, cask, or other ves-

1 sel or package, or a cover, wrapper, stopper, brand, label,  
2 sign, print, or other thing in, by, or with which the goods  
3 are packed or inclosed or otherwise prepared for sale or  
4 disposition.

5       SEC. 30. That this Act shall take effect upon its passage.

6 All Acts and parts of Acts inconsistent with this Act are  
7 hereby repealed, except so far as the same may apply to cer-  
8 tificates of registration issued under the Act of Congress ap-  
9 proved March third, eighteen hundred and eighty-one, entitled  
10 “An Act to authorize the registration of trade-marks and pro-  
11 tect the same,” or under the act approved August fifth, eight-  
12 een hundred and eighty-two, entitled “An Act relating to the  
13 registration of trade-marks.”





2d Session

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