

IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1904.

Mr. KITTREDGE introduced the following bill; which was read twice and referred to the Committee on Patents.

A BILL

To regulate and protect marks, trade-marks, commercial names, and symbols used in commerce, and to enforce treaties regarding 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 SECTION 1. This Act shall be known as the trade-marks
4 Act.

5	OBJECT OF ACT.
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6 SEC. 2. All marks, trade-marks, commercial names, and
7 symbols used in commerce with foreign nations, or among the
8 several States, or with the Indian tribes, or in the territory of
9 the United States, shall be used and their use protected in the
10 manner herein prescribed.

11 COUNTRY OF ORIGIN AND QUANTITY TO BE MARKED.

12 SEC. 3. All articles manufactured in foreign countries,
13 upon importation into the United States, shall be plainly



1 marked in legible English words, in a conspicuous place, with
 2 the name of the country of their origin, or, when from the
 3 character or size of the articles this can not be done, the
 4 package in which one or more of such articles are inclosed
 5 shall be marked in the same manner with the name of the
 6 country of their origin, together with a plain statement of
 7 the quantity of the contents of such package; in default of
 8 which the same shall not be admitted to entry at any custom-
 9 house of the United States.

10 The Secretary of the Treasury may make rules permit-
 11 ting the marking of such articles and packages and the
 12 amendment of the statement of quantity, and such prohibi-
 13 tion of entry shall, when such rules are complied with, be
 14 removed.

15 FOODS AND MEDICINES BEARING DECEPTIVE MARKS OR
 16 FALSE MARKS OF INSPECTION.

17 SEC. 4. Any article commonly used as a food or a
 18 medicine, to which is affixed—

- 19 1. A mark likely to deceive the consumer as to the place
 20 of its origin or as to its composition; or
- 21 2. A mark falsely indicating inspection under the laws of
 22 the United States or of any foreign government,
 23 shall be refused entry at every custom-house of the United
 24 States, and may be seized by the marshal of the proper



1 district under written authority of the district attorney of
2 any district of the United States in which the same or a
3 part thereof may be found, in transit to or from a foreign
4 nation, or Indian tribe, or among the several States, or over
5 the territory of the United States, but not in transit in bond.
6 Any person may file information with the district attorney
7 of the proper district, in which case the proceedings shall be
8 for the joint benefit of such informer and of the United States,
9 in equal parts.

10 The district attorney by whose authority the seizure was
11 made shall forthwith institute proceedings in rem in the name
12 of the United States, in the district court of the district, or in the
13 Territorial court of the Territory, or in the supreme court of
14 the District of Columbia, within which the said property or
15 any part thereof may be found, for the condemnation and
16 sale of the property seized, which proceedings shall con-
17 form as nearly as may be to proceedings in admiralty or reve-
18 nue cases. And if it shall be found that the provisions of
19 this section have been violated in respect to the said property,
20 the same shall be condemned and sold or destroyed as the court
21 may decree, and the proceeds thereof, if sold, paid to the
22 Treasurer of the United States to the use of the United States,
23 or one-half to such Treasurer and the other half to the person
24 filing an information therein, as hereinbefore provided.



1 PERSONS ENTITLED TO EXCLUSIVE USE OF MARK—LIA-
2 BILITY FOR MISUSE.

3 SEC. 5. A citizen of the United States, or a person
4 residing therein, a member of an Indian tribe, or a citizen
5 or subject of a government which by treaty or convention
6 affords similar privileges to citizens of the United States, or a
7 person who has a bona fide industrial or commercial establish-
8 ment in the territory of such government, may adopt for his
9 use in commerce with foreign nations, or among the several
10 States, or with the Indian tribes, or in the territory of the
11 United States, a mark to distinguish his produce, his
12 manufacture, or his merchandise or the merchandise over which
13 he has control as a common carrier or in the production of
14 which he has taken part, and shall be entitled to the
15 exclusive use of such mark in such commerce on comply-
16 ing with this Act. Another person making use of the same in
17 such commerce shall be liable therefor as hereinafter provided.

18 REGISTRATION OF CERTAIN MARKS PERMITTED—OF WHAT
19 DENIED.

20 SEC. 6. A person mentioned in the last section may
21 apply for the registration of a mark adopted by him for use
22 as hereinbefore provided, and the same may be registered on
23 the payment into the Treasury of the United States of the
24 fees prescribed in this Act,



1 (a) Provided, that there shall not be registered, except
2 as herein otherwise specified :

3 1. Public arms or decorations, including the
4 national flag.

5 2. A word or words denoting the nature or
6 quality of the goods, or a geographical
7 name or names, unless the applicant states
8 in his application that he makes no claim
9 of exclusive right to the use of those words
10 or names.

11 3. The name of a person, unless such name be in
12 a distinctive shape, or consist of the written
13 signature in original or facsimile of the per-
14 son who makes the application:

15 4. A mark contrary to good morals.

16 (b) Provided further, that at the time of making such
17 application no other person entitled to register said
18 mark shall have previously used the same on the
19 same class of goods in commerce with foreign
20 nations, or among the several States, or with the
21 Indian tribes, or in the territory of the United States,
22 and the same shall not have been abandoned;
23 except, however, that whenever it shall appear that
24 an applicant for registration or a registrant, at the
25 time of making the application for registration,



1 believed himself to be the first to adopt and use
2 the mark on the same class of merchandise, regis-
3 tration shall not be refused, nor shall said mark or
4 the registration thereof be held invalid because of
5 its use in a foreign country or within a single State
6 without registration.

7 (c) Provided further, that every trade-mark duly regis-
8 tered in a country with which the United States has
9 by treaty or convention provided for the reciprocal
10 registration of trade marks shall be entitled to regis-
11 tration pursuant to the terms of such treaty or con-
12 vention. But no citizen or subject of a foreign
13 government or person who has a bona fide indus-
14 try or commercial establishment in the territory of
15 such government, and not residing in the United
16 States, otherwise entitled to register a mark under
17 this Act, shall be entitled to such registration until
18 the mark sought to be registered shall have been
19 registered by such foreign government as a trade-
20 mark valid within its jurisdiction.

21 (d) Provided further, that nothing in this Act shall affect
22 the right of a person resident in a State to the use
23 of a mark used solely within the boundaries of such
24 State.



19 The mark is used (or, is intended to be used) in com-
20 merce with foreign nations or among the several States, or
21 with the Indian tribes or in the territory of the United States,
22 on the following class of goods: . (If applicant is
23 not a resident of the United States he must state his foreign
24 registration as follows:) The mark is registered as a trade
25 mark in , under the number , for the period

1 of _____, for the following class of goods: _____ . . (If a date
 2 of registration prior to date of filing is desired, applicant must
 3 state:) The date of first application in any foreign country
 4 is _____; application filed in _____. The registration of
 5 said trade-mark in (name country of origin) _____ is now in
 6 full force, but may expire or become void because of the
 7 following (insert causes for which it may expire or become
 8 void) _____.

9 The following is a copy of the mark for which registra-
 10 tion is sought:

11 Mark to be
12 inserted.

13 Date (place, day, month, and year) _____.
 14 _____.

15 The application must be signed by the applicant, who
 16 shall annex thereto his oath in the following form:

17 **FORM OF OATH.**

18 (Place where oath is made), ss.

19 _____, being duly sworn (affirmed) says: I
 20 am (one of). (or, if the applicant is a corporation, the presi-
 21 dent, secretary, or director of) the applicant(s) named in
 22 the annexed application; so far as I know and am informed,
 23 and to the best of my belief, the applicant(s) or his (their)





15 Subscribed and sworn to (or affirmed) before me this
16 _____ day of _____.

18 The oath may be made before any person within
19 the United States authorized by law to administer oaths, or
20 without the United States before any minister, chargé d'aff-
21 aires, consul, or commercial agent, holding commission under
22 the Government of the United States, or before any notary
23 public, judge, or magistrate having an official seal and au-
24 thorized to administer oaths in the foreign country in which
25 the applicant may be.

1 D R A W I N G .

2 The applicant shall file with his application a drawing
3 of the mark sought to be registered, or a facsimile thereof,
4 or a block for printing the same, one or all, as shall be pre-
5 scribed by the Commissioner of Patents.

6 R E G I S T E R O F A D D R E S S E S O F N O N R E S I D E N T S — N O T I C E T O
7 T H E M .

8 The applicant, if not a resident of the United States,
9 shall file with the Secretary of the Treasury his name and
10 address for service under such rules as may be made by such
11 Secretary establishing fees and regulations for such filing and
12 the service connected therewith.

13 The Secretary of the Treasury shall keep a register of
14 names and addresses so filed with him, and shall forthwith
15 forward by mail to each applicant, at his last registered
16 address, every paper or process served upon him in lieu of
17 personal service upon such applicant pursuant to this Act.

18 P R I O R I T Y U N D E R C O N V E N T I O N S .

19 S E C . 8 . A person entitled to the registration of a trade-
20 mark under this Act who has applied for the registration
21 of a trade-mark in any foreign country which by treaty or
22 convention affords similar privileges to citizens of the United
23 States, may file the application prescribed in the last section
24 in the Patent Office of the United States as of the date of
25 filing of his first application in such a foreign country, if four



1 months shall not yet have expired, and such filing shall have
 2 the same force and effect as though made on said date. Proof
 3 of such filing may be made by a certified copy thereof, or in
 4 such other manner as may be required by the Commissioner
 5 of Patents.

6 EXAMINATION OF APPLICATION—PUBLICATION OF MARK.

7 SEC. 9. On the filing of such application, oath, and
 8 drawing and the payment of the fees required by law, the
 9 Commissioner of Patents shall cause the application to be
 10 examined by the examiner in charge of trade-marks.

11 If it appear on such examination—

- 12 (a) That the applicant is one of the persons mentioned
 13 in section five of this Act; and
 14 (b) That the mark is entitled to registration as herein
 15 provided; and

16 If no notice of opposition to its registration be filed
 17 as herein provided—

18 the Commissioner shall cause the mark to be published in the
 19 Official Gazette of the Patent Office.

20 At the expiration of thirty days from such publication,
 21 unless notice of opposition shall previously have been given
 22 as herein provided, the Commissioner shall register the mark
 23 as a trade-mark and issue a certificate thereof in the following
 24 form, to which shall be attached one of the duplicate copies
 25 of the application filed in the Patent Office:



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1 be registered for the same term as in the country of origin if
2 such term be less than ten years.

3 The registration of a trade-mark of a nonresident alien
4 shall immediately expire in case such registered trade-mark
5 shall be declared invalid or the registration shall expire or
6 become void in the country of origin.

7 CERTIFICATE MAY ISSUE TO ASSIGNEE.

8 Certificate of registration may be granted to the
9 assignee of the applicant if otherwise entitled to register the
10 mark; but the assignment must first be entered of record in
11 the Patent Office, and shall remain on file therein.

12 NOTICE OF REFUSAL OF REGISTRATION.

13 SEC. 10. In case of refusal of the application for regis-
14 tration the Commissioner of Patents shall notify the appli-
15 cant thereof, giving him, briefly, the reasons for such refusal.

16 NOTICE TO INTERESTED PARTIES—OPPOSITION TO
17 REGISTRATION.

18 SEC. 11. If it appear on the examination directed in
19 section nine that a person other than the applicant, prior
20 to such application—

- 21 1. Has registered and is still entitled to the right of a
22 registrant in a mark; or
- 23 2. Has pending an application for registration of a
24 mark; or



1 3. Has previously used in commerce with foreign nations,
 2 among the several States, or with the Indian
 3 tribes, or in the territory of the United States, a
 4 mark
 5 to which, in the opinion of the examiner in charge of trade-
 6 marks, the mark for registration of which application is
 7 made has so near a resemblance as to be likely to cause con-
 8 fusion or mistake in the mind of the public or to deceive pur-
 9 chasers, the Commissioner shall give notice thereof before
 10 publication of the mark to the prior applicant, registrant, or
 11 user, who may file in the Patent Office notice of opposition,
 12 stating the grounds therefor, within thirty days, or in the
 13 case of a person whose name and address is registered with
 14 the Secretary of the Treasury, forty days thereafter, in default
 15 of which publication shall be made.

16 A person who would be injured by the registration of
 17 a mark may oppose the same by filing notice of opposition,
 18 stating the grounds therefor, in the Patent Office within thirty
 19 days after the publication of the mark sought to be registered.

20 INTERFERENCE OR OPPOSITION—PROCEDURE.

21 SEC. 12. In all cases where notice of opposition has
 22 been filed, the Commissioner of Patents shall notify the
 23 applicant thereof and of the grounds therefor. The Com-
 24 missioner shall, in every case of interference between pending
 25 applications when demanded by either applicant, or of opposi-



1 tion to registration, direct the examiner in charge of trade-
 2 marks to proceed to determine the question of priority between
 3 applicants or of the sufficiency of objections to registration,
 4 in such manner and upon such notice to those interested as
 5 he may by rules prescribe. The Commissioner may refuse to
 6 register the mark against the registration of which objection
 7 is filed, or may refuse to register both of two interfering
 8 marks, or may register the mark as a trade-mark for the
 9 person first to adopt and use the mark if otherwise entitled to
 10 register the same, unless an appeal is taken from the decision
 11 by a party interested in the proceedings within such time,
 12 not less than twenty days, as the Commissioner may prescribe.

13 CANCELLATION OF REGISTRATION.

14 SEC. 13. Whenever a person enumerated in section five
 15 of this Act shall deem himself injured by the registration of a
 16 trade-mark in the Patent Office he may apply to the Commis-
 17 sioner of Patents to cancel the registration of such trade-mark.
 18 The Commissioner shall refer such application to the examiner
 19 in charge of trade-marks and give notice thereof to the regis-
 20 trant. If it appear after a hearing before the examiner that the
 21 trade-mark is not used by the registrant or has been abandoned
 22 or was not entitled to registration, and if the examiner shall so
 23 decide and no appeal be taken from his decision, the Commis-
 24 sioner shall cancel the registration.



1 APPEAL FROM EXAMINER OF TRADE-MARKS TO COMMIS-
2 SIONER.

3 SEC. 14. Every applicant for the registration of a mark as
4 a trade-mark, every registrant, every party to any interference,
5 and every person who has filed notice of opposition or has
6 applied to the Commissioner for the cancellation of the regis-
7 tration of a trade-mark, may appeal from the decision of the
8 examiner in charge of trade-marks to the Commissioner in
9 person on payment of the fee prescribed herein and upon
10 compliance with such rules as may be made by the Com-
11 missioner.

12 APPEAL FROM COMMISSIONER TO COURT OF APPEALS,
13 DISTRICT OF COLUMBIA.

14 SEC. 15. If such party be dissatisfied with the decision
15 of the Commissioner of Patents, he may appeal to the court
16 of appeals of the District of Columbia.

17 NOTICE OF APPEAL.

18 SEC. 16. When an appeal is taken to the court of
19 appeals of the District of Columbia from the decision of the
20 Commissioner of Patents, the appellant shall give notice
21 thereof to the Commissioner and file in the Patent Office,
22 within such time as the Commissioner shall appoint, his
23 reasons of appeal specifically set forth in writing.

24 PROCEEDINGS UPON APPEAL.

25 SEC. 17. The court shall, before hearing such appeal,



1 give notice to the Commissioner of Patents of the time and
 2 place of the hearing, and on receiving such notice the Com-
 3 missioner shall give notice of such time and place in such
 4 manner as the court may prescribe, to all parties who appear
 5 to be interested therein. The party appealing shall lay
 6 before the court certified copies of all the original papers and
 7 evidence in the case, and the Commissioner shall furnish the
 8 court with the grounds of his decision, fully set forth in writ-
 9 ing, touching all the points involved by the reasons of
 10 appeal.

11 DETERMINATION OF APPEAL AND ITS EFFECTS.

12 SEC. 18. The court, on petition, shall hear and de-
 13 termine such appeal and revise the decision appealed from in
 14 a summary way, on the evidence produced before the Com-
 15 missioner, at such early convenient time as the court may
 16 appoint; and the revision shall be confined to the points set
 17 forth in the reasons of appeal. After hearing the case the
 18 court shall return to the Commissioner a certificate of its pro-
 19 ceedings and decision, which shall be entered of record in the
 20 Patent Office, and shall, unless reversed or modified as herein-
 21 after provided, govern the further proceedings in the case.
 22 But no opinion or decision of the court in any such case shall
 23 preclude any person interested from the right to contest the
 24 validity of the registration or of the trade-mark in any court
 25 wherein the same may be called in question.



1 APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT
2 OF COLUMBIA TO THE SUPREME COURT.

3 SEC. 19. A party to the proceeding who shall deem
4 himself aggrieved by the decision of the court of appeals of
5 the District of Columbia may appeal from such decision to
6 the Supreme Court of the United States. The court, upon
7 petition, shall hear and determine such appeal and may re-
8 examine and affirm, reverse, or modify the decision of the
9 court of appeals of the District of Columbia. The proceed-
10 ings upon appeal shall be governed by such rules as the higher
11 court may prescribe. The provisions hereinbefore contained
12 touching the certificate to be returned by the court of ap-
13 peals of the District of Columbia to the Commissioner, and
14 the recording of the same in the Patent Office, shall apply
15 with like force and effect to the Supreme Court.

16 REGISTRATION OBTAINABLE BY BILL IN EQUITY.

17 SEC. 20. Whenever registration on application is re-
18 fused, either by the Commissioner of Patents or by the court
19 of appeals of the District of Columbia upon appeal from the
20 Commissioner, the applicant may have remedy by bill in equity,
21 and the court having cognizance thereof, on notice to adverse
22 parties and other due proceedings had, may adjudge that such
23 applicant is entitled according to law to registration of the mark
24 for which he has applied. If such adjudication be in favor of the
25 applicant, the Commissioner shall register the mark as a trade-



1 mark, upon the applicant filing in the Patent Office a copy of
 2 the adjudication and otherwise complying with the require-
 3 ments of law. In all cases where there is no opposing party,
 4 a copy of the bill shall be served on the Commissioner, and
 5 all the expenses of the proceeding shall be paid by the appli-
 6 cant, whether the final decision be in his favor or not.

7 RENEWAL OF REGISTRATION.

8 SEC. 21. At any time within three months before the
 9 expiration of the registration of a trade-mark the Commis-
 10 sioner of Patents shall register the same anew and issue a
 11 certificate thereof upon application in the form prescribed
 12 in section seven, and such registration shall be noticed in the
 13 Official Gazette of the Patent Office:

14 Provided as follows:

- 15 1. The applicant shall pay to the Commissioner of Pat-
 16 ents the fees prescribed in this Act.
- 17 2. The applicant, at the time of the application for the
 18 renewal of registration, fulfills the conditions re-
 19 quired as to the applicant and the trade-mark, on
 20 an original registration under this Act.
- 21 3. The trade-mark has not fallen into the public domain
 22 in the country of origin.

23 NEW APPLICATION FOR REGISTRATION OF MARK

24 ALREADY REGISTERED.

25 SEC. 22. Whenever a registration is defective or in-

