

H. R. 15367.

IN THE HOUSE OF REPRESENTATIVES.

APRIL 23, 1904.

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

A BILL

To provide for the registration and protection of 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 with foreign nations, or among the several
5 States, or with Indian tribes, or with the insular or other
6 possessions of the United States, provided such owners shall
7 be domiciled in the United States or insular or other posses-
8 sions or territory thereof, or located in any foreign country
9 or tribes, which, by treaty, convention, or law affords simi-
10 lar privileges to the citizens of the United States, may obtain
11 registration for such trade-mark by complying with the fol-
12 lowing requirements:
13 First. By causing to be recorded in the Patent Office a
14 statement specifying name, domicile, location, and citizenship
15 of applicant; the class of merchandise and the particular de-



1 scription of goods comprised in such class to which the mark
2 is appropriated; a description of the mark and a statement of
3 the manner of applying the same to the goods, and the length
4 of time during which the trade-mark has been used. With
5 this statement shall be filed a drawing of the trade-mark,
6 signed by the applicant or his attorney, and such number of
7 specimens of the trade-mark as actually used as may be re-
8 quired by the Commissioner of Patents.

9 Second. By paying into the Treasury of the United
10 States the sum of ten dollars and complying with such regu-
11 lations as may be prescribed by the Commissioner of Patents.

12 SEC. 2. That the application must be accompanied by
13 a written declaration verified by the person, or by a member
14 of a firm, or by an officer of a corporation applying, to the
15 effect that such party has at the time a right to the use of
16 the trade-mark sought to be registered, and that no other per-
17 son, firm, or corporation has the right to such use either in
18 the identical form or in any such near resemblance thereto as
19 might be calculated to deceive; that such trade-mark is used
20 in commerce between the several States, or with foreign
21 nations, or with Indian tribes, or with the insular or other
22 possessions of the United States, and that the description and
23 facsimile presented truly represent the trade-mark sought to
24 be registered.

25 SEC. 3. That the filing date of any such application



1 shall be noted and recorded, but no alleged trade-mark shall
2 be registered unless the same appear to be lawfully used in a
3 lawful business by the applicant in the commerce above indi-
4 cated, or is within the province of a treaty, convention, or
5 declaration with a foreign power, nor which is identical or
6 substantially identical with a registered or known trade-mark
7 owned by another and appropriated to the same class of
8 merchandise, or which so nearly resembles some other person's
9 registered or known trade-mark as to be likely to cause con-
10 fusion or mistake in the mind of the public as to deceive pur-
11 chasers. In an application for registration the Commissioner
12 of Patents shall decide the presumptive lawfulness of a claim
13 to the alleged mark, and in any dispute between an applicant
14 and a previous registrant, or between applicants, he shall fol-
15 low as far as the same may be applicable the practice of courts
16 of equity of the United States in analogous cases.

17 SEC. 4. That certificates of registration under this Act
18 shall be issued in the name of the United States of America,
19 under the seal of the Department of the Interior, and shall
20 be signed by the Commissioner of Patents or the Acting Com-
21 missioner, and a record thereof, together with printed copies
22 of the specifications and drawings or facsimile, shall be kept by
23 the Commissioner of Patents. Copies of trade-marks and of
24 statements and declarations filed therewith, and certificates of



1 registration so signed and sealed shall be evidence in any suit
2 in which such trade-marks may be brought into controversy.

3 SEC. 5. That the certificate of registry shall remain in
4 force for thirty years from its date, except in cases where the
5 trade-mark is claimed for and applied to articles not manu-
6 factured in this country, and in which it receives protection
7 under the laws of a foreign country for a shorter period, in
8 which case it shall cease to have any force in this country by
9 virtue of this Act at the time that such trade-mark ceases to
10 be exclusive property elsewhere. At any time during the
11 six months prior to the expiration of the term of thirty years
12 such registration may be renewed from time to time on the
13 same terms and for a like period.

14 SEC. 6. That the registration of a trade-mark shall be
15 prima facie evidence of ownership. Any person who shall
16 reproduce, counterfeit, copy, or colorably imitate any trade-
17 mark registered under this Act and affix the same to mer-
18 chandise of the same descriptive properties as those de-
19 scribed in the registration shall be liable to an action on
20 the case for damages for the wrongful use of said trade-
21 mark at the suit of the owner thereof; and the party
22 aggrieved shall also have his remedy according to the course
23 of equity to enjoin the wrongful use of such trade-mark used
24 in commerce with foreign nations, or among the several States,
25 or with the Indian tribes, or with the insular or other posses-



1 sions of the United States, as aforesaid, and to recover com-
2 pensation therefor in any court having jurisdiction over the
3 person guilty of such wrongful act; and whenever in any
4 such action a verdict or decree is rendered for the plaintiff
5 the court may enter judgment thereon for any sum above the
6 amount of the actual damages sustained, according to the
7 circumstances of the case, not exceeding three times the
8 amount of such verdict or actual damages sustained, together
9 with costs. The courts of the United States shall have
10 original and appellate jurisdiction in such cases, without re-
11 gard to the amount in controversy.

12 SEC. 7. That no action or suit shall be maintained under
13 the provisions of this Act when the trade-mark is used in any
14 unlawful business, or upon any article injurious in itself, or
15 upon any article in connection with which false representa-
16 tions are made, or which mark has been used with the design
17 of deceiving the public in the purchase of merchandise.

18 SEC. 8. That any name, word, phrase, symbol, or
19 device, or the name of a deceased person or character
20 famous in history, fiction, or literature, or the name of a living
21 celebrity with the consent of such person, by which the
22 origin or ownership of goods can be distinguished, shall be
23 considered proper subject-matter for trade-mark registration
24 under this Act: *Provided*, That no merely descriptive word
25 or phrase, or merely the name of the applicant (unless such



1 name be in a distinctive shape or consist in a written signa-
 2 ture in original or facsimile of the applicant), or a merely geo-
 3 graphical name or term shall prima facie constitute a trade-
 4 mark which may be exclusively appropriated under this Act:
 5 *Provided further*, That no public arms or decorations, in-
 6 cluding the national flag, shall be registrable under this Act.

7 SEC. 9. That the following shall be the rates for trade-
 8 mark fees:

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

11 On filing each application for renewal of registration of
 12 a trade-mark, ten dollars.

13 On an appeal from the examiner in charge of trade-
 14 marks to the Commissioner of Patents, fifteen dollars.

15 On an appeal from the decision of the examiner in
 16 charge of interferences, awarding ownership of a trade-mark,
 17 to the Commissioner of Patents, fifteen dollars.

18 SEC. 10. That whenever application is made for regis-
 19 tration of a trade-mark which is substantially identical with
 20 a trade-mark appropriated to the same class of goods for
 21 which a certificate of registration has been previously issued
 22 to another, or for registration of which another has previously
 23 made application, or which so nearly resembles such trade-mark
 24 as, in the opinion of the Commissioner, to be likely to be mis-



1 taken therefor by the public, and the applicant shall show to
 2 the satisfaction of the Commissioner that he used the trade-
 3 mark of his application prior to the date of filing of the applica-
 4 tion on which such previous registration was granted, or the
 5 date of filing of such prior application, as the case may be, or
 6 shall show to the satisfaction of the Commissioner that the
 7 registrant or prior applicant has abandoned the use of such
 8 mark, the Commissioner shall suspend such latter application
 9 and give notice thereof to the registrant or prior applicant,
 10 as the case may be. If within such time, not less than thirty
 11 days from such notice, as the Commissioner shall prescribe,
 12 the registrant or prior applicant files in the Patent Office
 13 notice of opposition to the grant of such application, stating
 14 the reasons thereof, the Commissioner shall declare that an
 15 interference exists as to such trade-mark, and shall direct the
 16 examiner in charge of interferences to determine the question
 17 of ownership of such trade-mark. And the Commissioner
 18 may issue a certificate of registration to the party who is ad-
 19 judged to be the owner of the trade-mark, unless the adverse
 20 party appeals from the decision of the examiner in charge of
 21 interferences within such time, not less than twenty days.

22 SEC. 11. That every applicant for registration of a trade-
 23 mark not domiciled in the United States shall, before the issu-
 24 ance of the certificate of registration, designate by a notice in
 25 writing, filed in the Patent Office, some person residing



1 within the United States on whom process or notice of pro-
2 ceedings affecting the right of ownership of the trade-mark of
3 which such person may claim to be the owner, brought under
4 the provisions of this Act, or under other laws of the United
5 States, may be served with the same force and effect as if
6 served upon the applicant or registrant in person. For the
7 purposes of this Act it shall be deemed sufficient to serve
8 such notice upon such applicant or registrant by leaving a
9 copy of such process or notice, addressed to him at the last
10 address of which the Commissioner of Patents has been no-
11 tified.

12 SEC. 12. That if an applicant for registration of a trade-
13 mark is dissatisfied with the decision of the Commissioner of
14 Patents he may appeal to the Court of Appeals of the Dis-
15 trict of Columbia on complying with the conditions required
16 in case of an appeal from the decision of the Commissioner
17 by an applicant for patent or a party to an interference as to
18 an invention.

19 SEC. 13. That any person who shall procure registration
20 of a trade-mark or entry thereof in the office of the Commis-
21 sioner of Patents by a false or fraudulent declaration or rep-
22 resentation orally or in writing, or by any fraudulent means,
23 shall be liable to pay any damages sustained in consequence
24 thereof to the injured party, to be recovered in an action on
25 the case.



1 SEC. 14. That nothing in this Act shall prevent, lessen,
 2 impeach, or avoid any remedy at law or in equity which any
 3 party aggrieved by any wrongful use of any trade-mark might
 4 have had if the provisions of this Act had not been passed.

5 SEC. 15. That all applications for registration pending
 6 in the Office of the Commissioner of Patents at the time of
 7 the passage of this Act, may be amended with a view of
 8 bringing them and the certificates issued upon such applica-
 9 tions under its provisions, and the prosecution of said appli-
 10 cations may be proceeded with under the provisions of this
 11 Act.

12 SEC. 16. That nothing in this Act shall be construed as
 13 unfavorably affecting a claim to a trade-mark after a term
 14 of registration shall have expired, nor to give cognizance to
 15 any court of the United States in an action or suit between
 16 citizens of the same State, unless the trade-mark in contro-
 17 versy is used on goods intended to be transported to a foreign
 18 country or in lawful commercial intercourse with an Indian
 19 tribe, or in commerce among the several States, or with the
 20 insular or other possessions of the United States.

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



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



1 shall, when required to do so by the court before which appli-
2 cation to enforce said injunction is made, transmit without
3 delay to said court a certified copy of all the papers on which
4 the said injunction was granted that are on file in his office.

5 SEC. 19. That should registration of a trade-mark be
6 refused upon a known unregistered mark which is identical
7 or substantially identical with the mark sought to be regis-
8 tered, and appropriated to the same class of goods as the
9 mark of the application, the Commissioner of Patents shall,
10 upon the request of the applicant, or his successors or assigns,
11 suspend action on the application and give notice thereof to
12 the owner of the unregistered mark. If, within such time,
13 not less than thirty days from such notice, as the Commissioner
14 shall prescribe, the owner of the unregistered mark fail to file
15 his application within the time described by the Commissioner,
16 the unregistered mark shall not be a bar to the registration
17 of the mark of the application.

18 SEC. 20. That certificates of registration in force at the
19 date at which this Act takes effect shall remain in full force
20 and receive all the benefits of this Act for the term for which
21 they were issued, and shall be renewable on the same condi-
22 tions and for the same period as certificates issued under the
23 provisions of this Act.

24 SEC. 21. That the Commissioner of Patents is authorized
25 to make rules and regulations not inconsistent with law for



1 the conduct of proceedings in reference to the registration of
2 trade-marks under this Act.

3 SEC. 22. That no article of imported merchandise which
4 shall copy or simulate the name of any domestic manufacture or
5 manufacturer or trader, or of any manufacturer or trader located
6 in any foreign country which by treaty, convention, or law af-
7 fords similar privileges to citizens of the United States, or which
8 shall copy or simulate a trade-mark registered in accordance
9 with the provisions of this Act, or shall bear a name or mark
10 calculated to induce the public to believe that the article is manu-
11 factured in the United States or that it is manufactured in any
12 foreign country or locality other than the country in which it
13 is in fact manufactured, shall be admitted to entry at any
14 custom-house of the United States. And in order to aid the
15 officers of the customs in enforcing this prohibition, any
16 domestic manufacturer or trader and any foreign manufacturer
17 or trader who is entitled under the provisions of a treaty, con-
18 vention, declaration, or agreement between the United States
19 and any foreign country to the advantages accorded by law
20 to citizens of the United States in respect to trade or com-
21 mercial marks and commercial names, may require his name
22 and residence and name or mark of the locality in which his
23 goods are manufactured, and a copy of the certificate of regis-
24 tration of his trade-mark issued in accordance with the pro-
25 visions of this Act, to be recorded in books which shall be



1 kept for this purpose in the Department of the Treasury, un-
2 der such regulations as the Secretary of the Treasury shall
3 prescribe, and may furnish to the Department facsimiles of
4 his name, the name or mark of the locality in which his goods
5 are manufactured, or of his registered trade-mark; and there-
6 upon the Secretary of the Treasury shall cause one or more
7 copies of the same to be transmitted to each collector or other
8 proper officer of the customs.

9 SEC. 23. That it shall be the duty of the registrant to
10 give notice to the public that the trade-mark is registered,
11 either by affixing thereon the words, "Registered in United
12 States Patent Office," or abbreviated thus: "Reg. U. S. Patent
13 Office," or when from the character or size of the trade-mark,
14 or from its manner of attachment to the article to which it is
15 appropriated, this can not be done, then by affixing a label
16 containing the like notice to the package or receptacle wherein
17 the article or articles are inclosed; and in any suit for infringe-
18 ment by a party failing so to give notice of registration, no
19 damages shall be recovered except on proof that the defendant
20 was duly notified of infringement and continued the same
21 after such notice.

22 SEC. 24. That this Act shall take effect upon its passage.
23 All Acts and parts of Acts inconsistent herewith are hereby
24 repealed.



A BILL

By Mr. SOUTHWICK.

APRIL 23, 1904.—Referred to the Committee on Patents and ordered to be printed.

H. R. 15368.

IN THE HOUSE OF REPRESENTATIVES.

APRIL 23, 1904.

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

A BILL

Granting an increase of pension to Andrew J. Levi.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Secretary of the Interior be, and he is hereby, au-
4 thorized and directed to place on the pension roll, subject to
5 the provisions and limitations of the pension laws, the name
6 of Andrew J. Levi, late of Company D, First Regiment
7 Kentucky Volunteer Cavalry, war with Mexico, and pay him
8 a pension at the rate of twenty dollars per month in lieu of
9 that he is now receiving. .





58TH CONGRESS, }
2^D SESSION. } **H. R. 15368.**

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