

S. 3681

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 1966

M₁ McCLELLAN (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Act to provide for the registration and protection of trademarks used in commerce to carry out the provisions of certain international conventions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act be cited as the "Unfair Competition Act of
4 1966".

5 SEC. 2. The title of the Act entitled "An Act to pro-
6 vide for the registration and protection of trademarks used
7 in commerce, to carry out the provisions of certain inter-
8 national conventions, and for other purposes," approved
9 July 5, 1946 (60 Stat. 427), is amended by inserting after

1 “commerce”, the words “to protect persons against unfair
2 competition”.

3 SEC. 3. Section 32 (2) (15 U.S.C. 1114 (2)) of said
4 Act is amended by deleting its present introduction and
5 paragraph (a) and substituting therefor: “Notwithstanding
6 any other provision of this Act, the remedies given under this
7 Act for the infringement of any right shall be limited as
8 follows: (a) where an infringer is engaged and establishes
9 that he was an innocent infringer, the owner of the right
10 infringed shall be entitled as against such infringer only to an
11 injunction against future printing:”.

12 SEC. 4. Section 34 (15 U.S.C. 1116) of said Act is
13 amended by deleting from the end of the first sentence thereof
14 “of the registrant of a mark registered in the Patent Office”
15 and substituting therefor “protected under this Act”, and
16 by inserting in the third paragraph after the word “pro-
17 ceeding” (first occurrence) the words “involving a regis-
18 tered trademark and”.

19 SEC. 5. Section 35 (15 U.S.C. 1117) of said Act is
20 amended by deleting from the first sentence thereof “of the
21 registrant of a mark registered in the Patent Office” and sub-
22 stituting therefor “protected under this Act.”

23 SEC. 6. Section 36 (15 U.S.C. 1118) of said Act is
24 amended to read:

25 “In any action arising under this Act, the court may

1 order that labels, signs, prints, packages, wrappers, recep-
2 tacles, and advertisements in the possession of the defendant,
3 the use or intended use of which is in violation of any right
4 protected under this Act, and all plates, molds, matrices, and
5 other means of making the same, shall be delivered up and
6 destroyed.”

7 SEC. 7. Section 43 (15 U.S.C. 1125) of said Act is
8 amended by deleting subsections (a) and (b) and sub-
9 stituting therefor:

10 “SEC. 43. (a) Any person who shall engage in any
11 act, trade practice, or course of conduct, in commerce,
12 which—

13 “(1) causes or is likely to cause confusion, mistake
14 or deception as to the affiliation, connection or association
15 of such person, or as to the origin, sponsorship or ap-
16 proval of his goods, services, or vocational activities, or

17 “(2) either by a false or misleading statement or
18 by omission of material information, misrepresents his
19 goods, services, vocational activities, or their geographic
20 origin, or misrepresents or disparages another person’s
21 goods, services, vocational activities, or their geographic
22 origin, or

23 “(3) results or is likely to result in passing off the
24 goods, services, or vocational activities which he offers
25 as or for those of any other person, or

1 “(4) results or is likely to result in the wrongful
2 disclosure or misappropriation of a trade secret or other
3 research or development or commercial information
4 maintained in confidence by another, or

5 “(5) results or is likely to result in misappropriation
6 of quasi-property of another, not otherwise protected by
7 Federal statute, or

8 “(6) is otherwise contrary to commercial good faith
9 or to normal and honest practices of the business or
10 vocational activity in which he is engaged,
11 shall be liable in a civil action for unfair competition.

12 “(b) The remedies provided in this Act shall be avail-
13 able to any person whose business or vocational activity, or
14 the good will thereof, is or is likely to be damaged, to pre-
15 vent and to recover for the forms of unfair competition
16 enumerated in paragraph (a) hereof: *Provided*, That it
17 shall not be necessary to prove competition between the
18 parties, actual confusion, mistake, or deception, or intent
19 to injure the business or vocational activity of any other
20 person or the good will thereof.

21 “(c) The relief provided for by this section shall be in
22 addition to and shall not affect those remedies otherwise
23 available under this Act, under the common law, or pur-
24 suant to the statutes of any State or of the United States
25 (including patent and copyright statutes). Nothing in this

1 section shall be construed so as to preempt the jurisdiction
2 of any State to grant relief in cases of unfair competition.”

3 SEC. 8. Section 44 (h) (15 U.S.C. 1126h) of said Act
4 is amended to read:

5 “Any person designated in paragraph (b) of this section
6 shall be entitled to the remedies provided in this Act for un-
7 fair competition and infringement of marks.”

8 SEC. 9. The provided clause of section 46 (a) is amended
9 by deleting “in force on the effective date of this Act” and
10 inserting after “which does not relate to trademarks” the
11 phrase “or unfair competition,”.

12 SEC. 10. Section 1338 (a) of title 28, United States
13 Code, the first sentence is amended by inserting “unfair
14 competition” after “copyrights”.

15 SEC. 11. Section 1338 (b) of title 28, United States
16 Code, is amended to read:

17 “(b) The district courts shall have original jurisdiction
18 of any civil action asserting a claim of unfair competition
19 under the law of any State, when joined with a substantial
20 and related claim under any Act of Congress relating to
21 patents, copyrights, unfair competition, or trademarks.”

22 SEC. 12. This Act shall become effective upon enact-
23 ment, but except as otherwise herem specifically provided it
24 shall not affect any suit, proceeding, or appeal then pending.

89TH CONGRESS
2D SESSION

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