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Conseil des aspects des droits de propriété  
intellectuelle qui touchent au commerce

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## PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD

### Etats-Unis

Le présent document contient le texte des lois et réglementations ci-après<sup>1</sup>, notifiées par les Etats-Unis au titre de l'article 63:2 de l'Accord:

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- Titre 15 du Code des Etats-Unis, paragraphes 45 a), 1052 a) et 1125 a)	2
- Titre 27 du Code des Etats-Unis, paragraphe 205 e)-f)	5

Les Etats-Unis ont en outre fait mention de lois et réglementations sur les marques de fabrique ou de commerce qui s'appliquent d'une façon générale à la protection des indications géographiques et, pour compléter leur notification au titre de l'article 63:2, ils communiqueront des tables de corrélation pour toutes les principales lois et réglementations consacrées à la propriété intellectuelle et les "autres lois et réglementations" (document qui sera distribué sous la cote IP/N/1/USA/1).

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<sup>1</sup>Anglais seulement.

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**TITLE 15—COMMERCE AND TRADE**

**CHAPTER 2—FEDERAL TRADE COMMISSION; PROMOTION  
OF EXPORT TRADE AND PREVENTION OF UNFAIR  
METHODS OF COMPETITION**

**SUBCHAPTER I—FEDERAL TRADE COMMISSION**

**15 U.S.C. § 45. Unfair methods of competition unlawful; prevention by Commission**

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

- (1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.
- (2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.
- (3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless--
  - (A) such methods of competition have a direct, substantial, and reasonably foreseeable effect--
    - (i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or
    - (ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and
  - (B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

**TITLE 15—COMMERCE AND TRADE****CHAPTER 22—TRADE-MARKS****SUBCHAPTER I—THE PRINCIPAL REGISTER****15 U.S.C. § 1052 Trademarks registrable on the principal register; concurrent registration [Section 2]**

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it--

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement (as defined in section 2(9) of the Uruguay Round Agreements Act) enters into force with respect to the United States.

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

(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: Provided, That if the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to

- (1) the earliest of the filing dates of the applications pending or of any registration issued under this Act;
- (2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or
- (3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947.

Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons.

(e) Consists of a mark which

- (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them,
- (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under §4,

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- (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, or
- (4) is primarily merely a surname.

(f) Except as expressly excluded in paragraphs (a), (b), (c), (d) and (e)(3) of this section, nothing herein shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Commissioner may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before the date of the enactment of the North American Free Trade Agreement Implementation Act.

**15 U.S.C. § 1125 False designations of origin; false description or representation**  
**[Section 43]**

(a)(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

- (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or
- (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

- (2) is used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.