

Trademark Laws and Regulations

to use in commerce and files an application to register on the principal register established by this Act,

to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

Collective mark. The term "collective mark" means a trademark or service mark--

- (1) used by the members of a cooperative, an association, or other collective group or organization, or
- (2) which such cooperative, association, or other collective group or organization has a bona fide intention to use in commerce and applies to register on the principal register established by this Act,

and includes marks indicating membership in a union, an association, or other organization.

Mark. The term "mark" includes any trademark, service mark, collective mark, or certification mark.

Use in commerce. The term "use in commerce" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of this Act, a mark shall be deemed to be in use in commerce--

- (1) on goods when--
 - (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and
 - (B) the goods are sold or transported in commerce, and
- (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

Abandonment of mark. A mark shall be deemed to be "abandoned" when either of the following occurs:

- (1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for three consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.
- (2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.

Dilution. The term "dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of -

- (1) competition between the owner of the famous mark and other parties, or
- (2) likelihood of confusion, mistake, or deception.

Colorable imitation. The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

Registered mark. The term "registered mark" means a mark registered in the United States Patent and Trademark Office under this Act or under the Act of March 3, 1881, or the Act of February 20, 1905, or the Act of March 19, 1920. The phrase "marks registered in the Patent and

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Trademark Office" means registered marks.

Prior acts. The term "Act of March 3, 1881," "Act of February 20, 1905," or "Act of March 19, 1920," means the respective Act as amended.

Counterfeit. A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

Singular and plural. Words used in the singular include the plural and vice versa.

Intent of Act. The intent of this Act is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, tradenames, and unfair competition entered into between the United States and foreign nations.

TITLE XI—REPEAL OF PREVIOUS ACTS

Note: Sections 46(a) to 51 are uncodified portions of the U.S. trademark laws

15 U.S.C. 1051 Time of taking effect - Repeal of prior acts [Section 46(a)]

This Act shall be in force and take effect one year from its enactment, but except as otherwise herein specifically provided shall not affect any suit, proceeding, or appeal then pending. All Acts and parts of Acts inconsistent herewith are hereby repealed effective one year from the enactment hereof, including the following Acts insofar as they are inconsistent herewith: The Act of Congress approved March 3, 1881, entitled "An Act to authorize the registration of trademarks and protect the same"; the Act approved August 5, 1882, entitled "An Act relating to the registration of trademarks"; the Act of February 20, 1905 (U.S.C., title 15, secs. 81 to 109, inclusive), entitled "An Act to authorize the registration of trademarks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same", and the amendments thereto by the Acts of May 4, 1906 (U.S.C., title 15, secs. 131 and 132; 34 Stat. 169), March 2, 1907 (34 Stat. 1251, 1252), February 18, 1909 (35 Stat. 627, 628), February 18, 1911 (36 Stat. 918), January 8, 1913 (37 Stat. 649), June 7, 1924 (43 Stat. 647), March 4, 1925 (43 Stat. 1268, 1269), April 11, 1930 (46 Stat. 155), June 10, 1938 (Public, Numbered 586, Seventy-fifth Congress, ch. 332, third session); the Act of March 19, 1920 (U.S.C., title 15, secs. 121 to 128, inclusive), entitled "an Act to give effect to certain provisions of the convention for the protection of trademarks and commercial names made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", and the amendments thereto, including the Act of June 10, 1938 (Public, Numbered 586, Seventy-fifth Congress, ch. 332, third session): Provided, That this repeal shall not affect the validity of registrations granted or applied for under any of said Acts prior to the effective date of this Act, or rights or remedies thereunder except as provided in §§8, 12, 14, 15, and 47 of this Act; but nothing contained in this Act shall be construed as limiting, restricting, modifying, or repealing any statute in force on the effective date of this Act which does not relate to trademarks, or as restricting or increasing the authority of any Federal departments or regulatory agency except as may be specifically provided in this Act.

15 U.S.C. 1051 Existing registrations under prior acts [Section 46(b)]

Acts of 1881 and 1905. Registrations now existing under the Act of March 3, 1881, or the Act of February 20, 1905, shall continue in full force and effect for the unexpired terms thereof and may be renewed under the provisions of §9 of this Act. Such registrations and the renewals thereof shall be subject to and shall be entitled to the benefits of the provisions of this Act to the same extent and with the same force and effect as though registered on the principal register established by this Act except as limited in §§8, 12, 14, and 15 of this Act. Marks registered under the "10-year proviso" of §5 of the Act of February 20, 1905, as amended, shall be deemed to have become distinctive of the registrant's goods in commerce under paragraph (f) of §2 of this Act and may be renewed under §9 hereof as marks coming within said paragraph.

Act of 1920. Registrations now existing under the Act of March 19, 1920, shall expire 6 months after the effective date of this Act, or twenty years from the dates of their registrations, whichever date is later. Such registrations shall be subject to and entitled to the benefits of the provisions of this Act relating to marks registered on the supplemental register established by this Act, and may

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not be renewed unless renewal is required to support foreign registrations. In that event renewal may be effected on the supplemental register under the provisions of §9 of this Act.

Subject to registration under this Act. Marks registered under previous Acts may, if eligible, also be registered under this Act.

15 U.S.C. 1051 Applications pending on effective date of Act [Section 47(a)]

All applications for registration pending in the Patent and Trademark Office at the effective date of this Act may be amended, if practicable, to bring them under the provisions of this Act. The prosecution of such applications so amended and the grant of registrations thereon shall be proceeded with in accordance with the provisions of this Act. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued in force to this extent for this purpose only, notwithstanding the foregoing general repeal thereof.

15 U.S.C. 1051 Appeals pending on effective date of Act [Section 47(b)]

In any case in which an appeal is pending before the United States Court of Customs and Patent Appeals or any United States Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia or the United States Supreme Court at the effective date of this Act, the court, if it be of the opinion that the provisions of this Act are applicable to the subject matter of the appeal, may apply such provision or may remand the case to the Commissioner or to the district court for the taking of additional evidence or a new trial or for reconsideration of the decision on the record as made, as the appellate court may deem proper.

15 U.S.C. 1051 Prior acts not repealed [Section 48]

Section 4 of the Act of January 5, 1905 (U.S.C., title 36, §4), as amended, entitled "An Act to incorporate the National Red Cross," and §7 of the Act of June 15, 1916 (U.S.C., title 36, §27), entitled "An Act to incorporate the Boy Scouts of America, and for other purposes," and the Act of June 20, 1936 (U.S.C., title 22, §248), entitled "An Act to prohibit the commercial use of the coat of arms of the Swiss Confederation," are not repealed or affected by this Act.

15 U.S.C. 1051 Preservation of existing rights [Section 49]

Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith prior to the effective date of this Act.

15 U.S.C. 1051 Severability [Section 50]

If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act shall not be affected thereby.

15 U.S.C. 1058 Applications pending on effective date of the Trademark Law Revision Act of 1988 [Section 51]

All certificates of registration based upon applications for registration pending in the Patent and Trademark Office on the effective date of the Trademark Law Revision Act of 1988 shall remain in force for a period of 10 years.

NOTES OF OTHER SECTIONS

SOME U.S. CODE (AND C.F.R.) SECTIONS PROTECTING SPECIFIC NAMES, TERMS AND MARKS

(This is a partial listing of some of the names, terms, initials and marks which are protected under the United States Code (and Code of Federal Regulations). Almost all of these sections protect symbols, emblems, seals, insignia and badges, as well as the referenced name. Many sections also protect other names and initials. Some sections protect characters in addition to names. See the sections for specific information. See also the next listing which provides other important Code sections, many of which also protect certain names, terms, initials and marks, e.g. 18 U.S.C. §709. For further information on other sections, see the Index to the United States Code, and the Index to the Code of Federal Regulations, especially under the terms "decorations, medals and badges," "coats of arms," "character," "insignia," "names," "seals" and "symbols." Other sections also exist which are not indexed under these terms.)

NAME BY REFERENCE	SECTION
American Ex-Prisoners of War	36 U.S.C. §2115
American Legion	36 U.S.C. § 48
The American National Theater and Academy	36 U.S.C. §3305
American Symphony Orchestra League	36 U.S.C. §3416
American Veterans of World War II, Korea, and Vietnam	36 U.S.C. §67p
American War Mothers	36 U.S.C. §100
AMVETS (see American Veterans of World War II, Korea, and Vietnam)	
Big Brothers [and other names]	36 U.S.C. §895
Big Sisters [and other names]	36 U.S.C. §895
Blinded Veterans Association	36 U.S.C. §867
Blue Star Mothers of America, Inc.	36 U.S.C. §956
Board for Fundamental Education	36 U.S.C. §516
Boy Scouts of America	36 U.S.C. §27
Central Intelligence Agency	50 U.S.C. §403m
CIA (see Central Intelligence Agency)	
Citius Altius Fortius (see Olympic)	
Civil Air Patrol	36 U.S.C. §206
Coast Guard [and other names]	14 U.S.C. §639
Commodity Credit Corporation	15 U.S.C. §714m
Consolidated Rail Corporation	45 U.S.C. §711
DIA (see Defense Intelligence Agency)	
Defense Intelligence Agency	10 U.S.C. §§191, 201
Disabled American Veterans	36 U.S.C. §90h
FFA (see Future Farmers of America)	
The Foundation of the Federal Bar Association	36 U.S.C. §587
4-H Club [also specific reference to emblem consisting of a green	

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four-leaf clover with stem and the letter H in white or gold on each leaflet]	18 U.S.C. §707
F.B.I. (see Federal Bureau of Investigation)	
Federal Bureau of Investigation.....	18 U.S.C. §709
Federal Home Loan Mortgage Corporation	12 U.S.C. §1457, 12 U.S.C. §1723a
Future Farmers of America	36 U.S.C. §286
Geneva Cross (see Red Cross)	
Girl Scouts of America	36 U.S.C. §36
Give a Hoot, Don't Pollute (see Woodsy Owl)	
The Golden Eagle [also specific reference to insignia of an American Golden Eagle (colored gold) and a family group (colored midnight blue) enclosed within a circle (colored white with a midnight blue border)	18 U.S.C. §715
Government National Mortgage Association.....	12 U.S.C. §1723a, 18 U.S.C. §709
International Olympic Committee (see Olympic)	
HCFA (see Social Security)	
Health Care Financing Administration (see Social Security)	
Ladies of the Grand Army of the Republic	36 U.S.C. §78o
Library of Congress.....	36 C.F.R. §701.35
Life Saving Service (see Coast Guard)	
Lighthouse Service (see Coast Guard)	
Little League; Little Leaguer.....	36 U.S.C. §1086
Marine Corps 10 U.S.C. §7881	
Medicare (see Social Security)	
The Military Chaplains Association of the United States of America 36 U.S.C. §316	
NASA (see National Aeronautics and Space Administration)	
National Agricultural Credit Corporation	18 U.S.C. §709
National Aeronautics and Space Administration.....	42 U.S.C. §2459b; 14 C.F.R. §§1221.101, 1221.107
National Conference of State Societies, Washington, District of Columbia 36 U.S.C. §418	
National Conference on Citizenship	36 U.S.C. §446
National Music Council.....	36 U.S.C. §676
National Safety Council.....	36 U.S.C. §477
National Society, Daughters of the American Colonists.....	36 U.S.C. §2909
National Society of the Daughters of the American Revolution.....	36 U.S.C. §18c
National Women's Relief Corps, Auxiliary of the Grand Army of the Republic 36 U.S.C. §1017	
Naval Sea Cadet Corps	36 U.S.C. §1056