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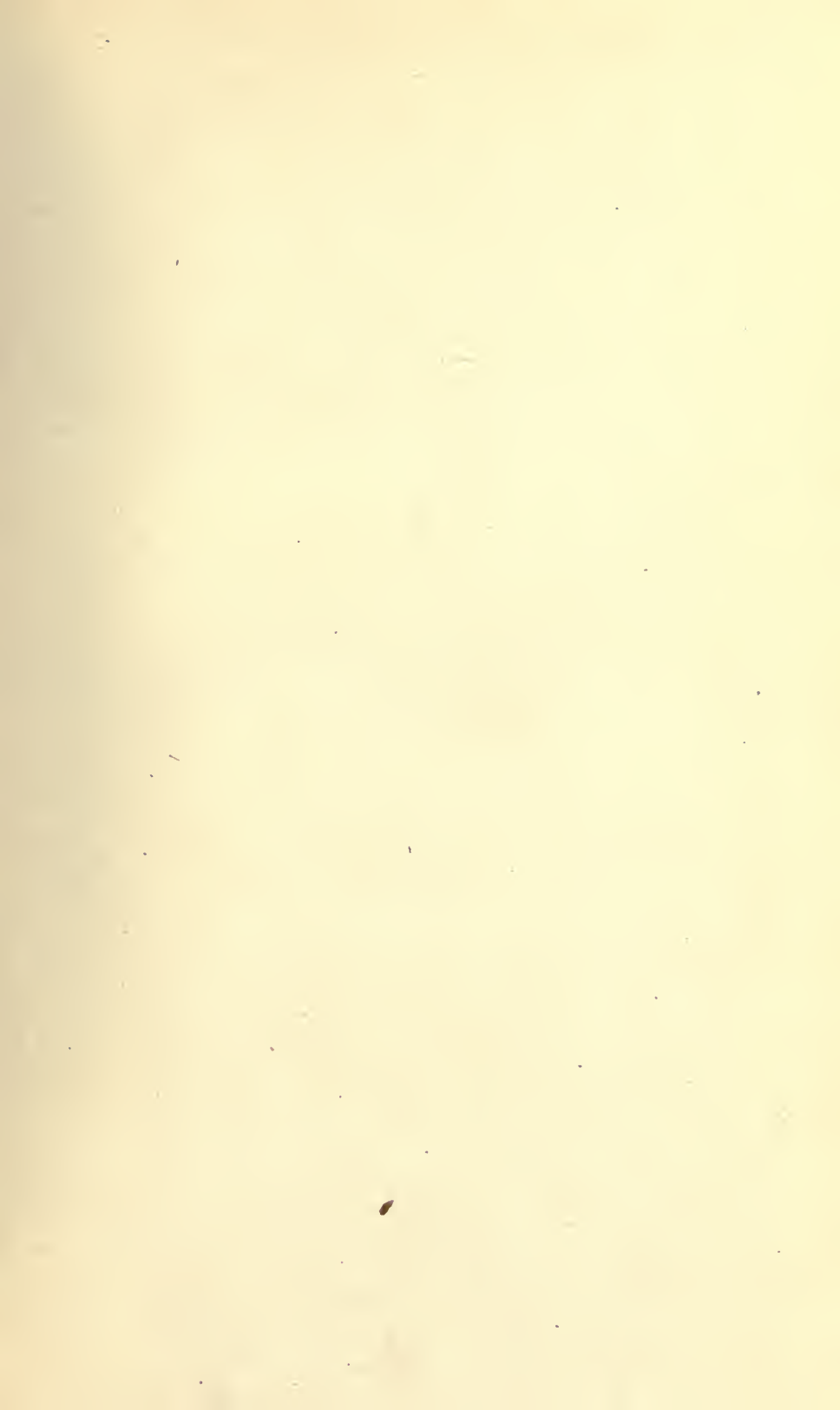
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Mr Nicholas A. Ocker

Princeton

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TRADE MARK LAWS  
OF THE WORLD  
AND  
UNFAIR TRADE

BY

B. SINGER  
" )



National Life Building, CHICAGO

30 Church Street, NEW YORK

Victor Building, WASHINGTON, D. C.

17 Neuenburger Strasse, BERLIN



CHICAGO, FEBRUARY, 1913

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## PREFACE

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**F**IFTEEN years ago I published a book on foreign trade marks for the convenience of attorneys, which, in consequence of the tremendous growth and expansion of international commerce and the changes in the laws and practice, has become obsolete. In my recent publication, "Patent and Trade Mark Laws of the World," I endeavored in a brief manner to provide an epitome of the trade mark laws, but I found it impossible in a work of that character to devote the space to it which its importance demanded, hence this publication, for which I have been collecting data during the last quarter of a century.

The laws are quoted direct from the statute books, rules of practice, decisions of the courts, etc.

I desire to acknowledge my indebtedness to the following publications for valuable suggestions, viz: "Bulletin of the U. S. Trade Mark Association" (Arthur W. Barber, Editor), "La Propriété Industrielle" and "Blatt für Patent Muster und Zeichenwesen."

The keen rivalry among nations of the world's markets lends additional importance to the registry of trade marks on popular and standard classes of merchandise.

A registered mark not only protects the owner against imitation wares, but gives character and a guarantee of quality to the merchandise bearing the mark. It is a token of respectability and bears upon its face the fact that the owner desires to convey to the consumer a guaranty as to the uniformity and quality of the product. "A trade mark is a distinctive mark, through which the products of particular manufacturers, or the commodities of particular merchants may be distinguished from those of others." (Standard Paint Co. vs. Trinidad Asphalt Mfg. Co.)

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A trade mark when once established is a business getter; its object is to hold the customer when once obtained, therefore its protected name is of prime importance.

I have endeavored to make this work as complete as possible with the means at my command, for the use and assistance of attorneys as well as for the information valuable to trade mark owners, manufacturers and exporters.

Equal consideration has been given to each country, regardless of its importance in international trade.

I submit this work to the favorable consideration of my readers.

B. SINGER.

CHICAGO.

NEW YORK.

WASHINGTON.

BERLIN.

February, 1913.

## ARGENTINE REPUBLIC

The Argentine Republic is bounded on the north by Bolivia, on the east by Brazil and Uruguay and the Atlantic Ocean, on the south by the Atlantic Ocean and Chile and on the west by the Andes, which separates it from Chile. It extends from north and south a distance of 2,400 miles, and its average breadth is nearly 700 miles. It consists of 14 provinces, and, including the 10 adjoining territories, contains about 1,135,840 English square miles, with a population of about 7,250,000.

There are 15,210 miles of railway in working order.

Principal exports are: Dry and salted ox hides, dry and salted horse hides, sheep skins, tallow, wool, frozen wethers, wheat, maize, linseed, jerked beef, horns, etc., quebracho, tobacco, sugar, butter (frozen), etc.

Cattle and sheep breeding constitutes an important industry, the estimated stock of horned cattle being 30,000,000, and sheep 90,000,000.

The chief articles of import are: Cotton goods, woolen goods, ready-made clothing, drugs and chemicals, pine lumber, wire for fencing, harvesting and other agricultural machinery, building material, printing paper, silk goods, pottery, earthenware, tobacco and liquors.

**MONEY, WEIGHTS AND MEASURES**—The customs duties are levied in the Argentine Republic in specie. The monetary unit is the peso=100 centavos=about 4s. or \$1.00. For weights and measures the metrical system has been adopted.

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### TRADE MARK LAW OF NOVEMBER 23, 1900

#### *Term.*

Ten years; renewable indefinitely in like terms. If renewal of the registration be not effected at the expiration of ten years, the trade mark will lapse or may become the property of the first applicant for registration. (Ch. Lorilleux y Cia vs. A. Gares, 2 Patentes y Marcas, p. 529.)

#### *Fees.*

The fee is \$50.00, Argentine currency, payable when application is made.

#### *Mode of Application and Procedure.*

When the registry of a trade mark is applied for, it is published during five consecutive days in the Official Bulletin of the Government, and during the period of thirty days following

the last date of publication, any one claiming the right to do so may protest. If both parties waive judicial proceedings the Commissioner of Trade Marks will decide the case within fifteen days and appeal may be had to the Minister of Agriculture within ten days thereafter. If the parties have not waived judicial proceedings the Trade Mark Office sends a copy of the petition and protest to the District Court, where it assumes the nature of an ordinary lawsuit.

If there is no opposition within the statutory period the Office makes an examination, and if no identical or similar marks are found registered, the registry is granted.

### *What May be Registered.*

Denominations of articles, or names of persons in some particular form; emblems, monograms, engravings, or prints; seals, vignettes, and stamps in relief; borders, words, or fancy names; letters and numerals with a special design or forming a combination; casks or wrappings of articles; and any other signs by which the products of the soil and agricultural industries can be distinguished may be used as trade marks. (Art. 1.)

The following can not be registered as trade marks:

1. Letters, words, names, or designations which the nation, or the provinces, alone, use or should use.
2. The shape or form given to the articles by the manufacturer.
3. The color of the articles.
4. Terms or expressions which have become of general use and signs which do not present any novel or special character.
5. Designations usually employed to indicate the nature of the articles or the class to which they belong.
6. Designs or expressions of an immoral nature. (Art. 3.)

Names and portraits of persons can not be used as marks without the consent of the persons themselves or their heirs to and including the fourth degree. (Art. 4.)

Term, ten (10) years, renewable indefinitely for similar periods.

### *Requirements.*

Spanish power of attorney legalized by an Argentine Consul, fourteen (14) facsimilies of the mark and one electrotype, Spanish description of the mark, in duplicate; if it consists of a picture or an emblem, it must indicate the class to which it is applied and whether it applies to products of manufacture, or of the soil, or to objects of commerce.

Priority of ownership of a trade mark shall be determined by the day and hour on which the application was filed.

An extract of the application will be published in the "Boletín Oficial," with date of presentation, name of the person interested and a drawing or design of the mark.

If within thirty (30) days after the publication, no one opposes the issuance of the trade mark, the mark applied for shall be granted. (Art. 21.)

### *Opposition.*

According to Art. 21 anyone may file an opposition 30 days after publication. The Patent Office will refuse registration of any trade mark which, if registered, would lead to confusion with another trade mark. The applicant may appeal to the court and from the court to the Secretary of Agriculture against the decision of the Patent Office. He may also appeal to the Federal Court. The public prosecutor represents the Patent Office.

In opposition suits, where appeal has been taken, the Patent Office suspends all further action and the case is referred to the Judge of the Federal Court. The procedure is as follows: A written demand is made that the court should dismiss the opposition as filed, showing that the opponent's contention is groundless. The petition for dismissal is referred to the defendant and the defendant must answer 9 days from date of service of the papers. (Applicant becomes the defendant.)

After the answer has been filed the arguments of the court begin, which generally lasts 30 days, during which time the parties may take such testimony as is necessary, etc. Generally the term is extended for 1 or 2 months longer, but during the first term of thirty days the parties must state the nature of the evidence. After the evidence has been taken both parties are allowed 6 days to examine the same. The evidence is then presented to the court and the court gives its decision.

The time consumed in a suit in the first instance ranges from eight months to a year.

After a decision has been rendered by the court of first instance appeal may be taken to the Federal Chamber. In case of appeal to the Federal Chamber the appellant is given a period of nine days for filing his statement, which statement is referred to the appellee for answer, and he must answer in six days. After answer is given the court renders judgment. The judgment rendered by the Federal Chamber can be appealed from only when the same is a violation of some constitutional provision or if the same is based on defect of form, etc. The Federal Chamber litigation generally lasts one year or more; but the parties may file a petition to the Judge for the prompt dispatch of the

matter. However, this can only be done if no decision has been rendered for one year or more.

### TRIBUNALS.

#### *Courts of First Instance.*

One Judge at each Capital of a Province; three Judges in the Federal Capital.

#### *Chambers of Appeal.*

Composed of five Justices. They are established at the cities of Buenos Aires, La Plata, Parana and Cordoba. In matters where foreigners are involved the Chamber at the Federal Capital generally intervenes.

### COURT PROCEDURE.

#### *Nullity, Imitation or Counterfeiting of Trade Marks.*

If the owner of the trade mark has been negligent in filing an opposition according to Article 21, the only remedy left for him is to bring an action for annulment of the trade mark. The procedure is the same as in opposition suits.

If there is imitation of the trade mark or if the trade mark has been counterfeited the owner of the registered trade mark may institute either civil proceedings or he can bring criminal action. In civil proceedings he may recover damages.

If the trade mark has been counterfeited the procedure is as follows: The complainant makes a request for seizure of the goods. The request is filed at the court at the responsibility and risk of the petitioner, and he must furnish security. The court uses its own discretion, but the security required must satisfy the judge and must be sufficient to cover all damages which the seizure may cause. The court, as a rule accepts the oath of the petitioner (this oath is known as the *causion juratoria*), in which he states that he assumes the responsibility for all damages which may accrue, and this is allowed when the court is satisfied that the petitioner is a party of responsibility. The Judge may suspend the above oath and may accept personal bonds, etc. After the seizure is made the plaintiff must institute action by filing a written statement and petition within 15 days next following the seizure. Failure to do so entitles the other party to ask that the seizure be raised. (Art. 63.)

The bill of complaint is filed before the Federal judge, showing documentary evidence of the complainant's right to institute proceedings. The judge then fixes the date for argument. After argument has been made the court again sets a date for another hearing, and although the entire proceeding is orally conducted, a written statement of all the evidence must be filed. In

order to take the evidence a new date is set for hearing, and when all the evidence is filed, three days is allowed to both parties to examine the records, and finally a last hearing is set for argument. After that the judge decides the case. If the judgment is appealed the Chamber sets a date for a hearing. The court after going over the records renders a decision. These proceedings generally take but a very short time.

#### *Assignment.*

The ownership of a mark passes to the heirs, and can be transferred by deed or by will.

The assignment or sale of a business includes that of the trade mark (unless there is some special stipulation to the contrary), and the person taking over the business has the right to use the mark, even though it be a name, in the same way as did the former owner, without any other restrictions than those expressly stated in the deed of sale or assignment.

The transfer of a trade mark shall be recorded at the office in which it was registered. Otherwise the right to use the mark shall not be acquired.

#### *Infringement.*

Merchandise or products unlawfully marked, found in the possession of the culprit or of his agents, shall be confiscated and sold after the destruction of said mark; the amount realized, after payment of the expenses and indemnity laid down by this law, shall be given in aid of the public schools of the province in which the confiscation took place. (Art. 53.)

Owners of trade marks, to whose knowledge it may come that there are to be found in the custom-house, postoffice, or any other government or private office, labels, capsules, wrappers, or any other articles, similar to those which constitute or appertain to their mark may apply to the competent authority and ask for an attachment on said articles, and the court shall grant the request on the responsibility of the petitioner upon his giving such bonds as the court may deem proper.

It shall be optional for the court to exempt the applicant from giving bond when he is a person of well-known responsibility. (Art. 57.)

If the party injured by the use of a trade mark does not file a complaint within one year after the date of the infringement the action shall be barred by limitation. (Art. 44.)

No civil or criminal action shall be allowed after the lapse of three years from the time when the offense was committed or repeated, or after the lapse of one year from the day on which the owner of the mark had first cognizance of the fact.

The acts which interrupt limitation are the same established by law in all cases. (Art. 55.)

*Penalties.*

The following shall be punishable by a fine of from \$20 to \$500 in national currency, and by imprisonment for a period varying from one month to one year, the corporal penalty not to be redeemed by money:

1. Those who counterfeit a trade mark.
2. Those who use counterfeited marks.
3. Those who fraudulently imitate a mark.
4. Those who knowingly affix a mark not belonging to them, or a fraudulently imitated one, on their products or goods.
5. Those who knowingly sell, place on sale, or lend themselves to the sale or circulation of counterfeited marks, and those who sell authentic marks without the knowledge of the owner.
6. Those who knowingly sell, place on sale, or lend themselves to sell or circulate articles with marks counterfeited or fraudulently imitated.

The penal law of the Argentine Republic, punishing the offense of wilful trade mark infringement, is a peculiarly stringent one, in that it makes the intent to infringe immaterial. The only trade marks recognized in the Argentine law are those registered in the office of the proper department. Such registration is held to be notice to any party interested of the rights of the registrant. Accordingly, in a suit to punish the infringement of a registered trade mark, where the defendant pleaded that he had no knowledge of the plaintiff's registration and that for this reason he should not be held responsible for the similarity between the two marks, it was held that the contention was contrary to the import of the law; the law, it was said, provided ample means of publication, so that all who desire to use or apply trade marks are able to fulfill the obligation required of them, to-wit, to examine the trade marks already registered and to avoid infringement upon any of them. It was held, therefore, to be a presumption of law that an infringement or imitation cannot exist without the knowledge of the party infringing. To establish a principle to the contrary, would leave an open door for bad faith and render the punishment of offenses of this kind almost impossible.

The defendant, accordingly was condemned to imprisonment for six months and to the payment of a fine of five hundred dollars, in addition to the cost of the suit, reserving moreover to the plaintiff the right to recover all losses and damages which he had sustained by the infringement, and directing that the judgment should be published in two daily papers of the capital at the defendant's expense. The trade mark here alleged to have been infringed was "Nonpareil" as applied to lubricating oils,



a term which might be considered at least suggestive of quality. (Bedford vs. Benyon, *Patentes y Marcas*, 1905, p. 342.)

*Registry is Necessary to Protect Foreign Goods.*

Consul-General Alban G. Snyder, of Buenos Aires, calls American manufacturers' attention to the absolute necessity of registering their trade marks in Argentine if they wish to enjoy exclusive use of their marks in that country. He writes:

"The appropriation of foreign trade marks has reached a very serious state in recent years, and if manufacturers do not wish to become the victims of unscrupulous business firms or individuals (provided some of them have not already experienced this sharp practice) they should take warning from the experience of others. Until the Argentine law is changed the registry of trade marks is the only way to combat this class of men, who make it their object to profit by the brains and business ability of their superiors.

"If an Argentine firm usurps the mark of a foreign manufacturer and registers it, then the real owner is helpless, for the new owner can take legal action against the real owner of the mark for imitating or fraudulent use of same. The rightful owner may even have his merchandise excluded from the market simply because it bears his own mark. It has happened that foreign manufacturers have had to leave the market after having spent much time and money in building up their business, or have had to pay an indemnity to a local firm which has been brazen enough to register a world-known mark.

"Not only do local manufacturers appropriate foreign trade marks, but likewise mark their wares so as to convey the impression that they are of foreign manufacture, thereby increasing the fraudulent practice, and they carry this on by means of protective laws. Until such time as these evils are corrected, American manufacturers should see that their trade marks are registered, provided the market is worth their time and attention."

CLASSIFICATION.

Decree of July 30, 1912, Referring to the Inscription of  
Commercial and Agricultural Trade Marks.

Buenos Aires, July 30, 1912.

With the object of avoiding the difficulties which might arise from the inscription of commercial and agricultural trade marks, in accordance with the law No. 3975, and taking into account that which has been established by the decrees of December 5, 1900, and June 7th (10th), 1912.

The President of the Argentine Nation

*Decrees:*

Article 1. The Administration of the Patent and Trade Marks Office will not despatch an application in which does not appear the name and residence of the applicant, and in which is also specified the articles to which the mark will be applied, and determining the class to which they belong or correspond.

Art. 2. The inscription of commercial and agricultural trade marks will be effected only for a single one of the classes established in the present decree. If the manufacturer or merchant should wish to extend the use of a trade mark to more than one class, he will have to file the corresponding applications and conform to the requisite established in Article 38 of the law No. 3975.

Art. 3. The certificate constituting the proprietorship of the trade mark will be issued with reference to every one of the single classes for which it has been registered.

Art. 4. If a manufacturer or merchant applies for the inscription of his name as a trade mark, he will be obliged to do so in a form which shall avoid all confusion, and if the application presented with such object should not conform to this exigency, the Administration of the Patent and Trade Mark Office will notify the same to the interested party in the already established manner, in order that said party may modify the same to the necessary form.

In the case of the interested party failing to modify the same, the Directorate will pass their resolution according to law corresponding to the matter.

Art. 5. When in a label or drawing the inscription for which has been applied for, there is expressed the name of an article of whatsoever class or nature, the trade mark will only be accorded for the article indicated therein.

Art. 6. For the purposes of this decree, the following classes have been established:

*Class 1.*

Chemical products used in trade and manufacturing works, photography, scientific investigations, in agricultural labors, and of horticulture, substances anti-corrosive:

Such as acids, alkalis, mineral dyes, pigments, mineral, vegetable and animal essences not medical, photographic plates, paper and films, liquids and substances for photographic purposes, artificial manures (fertilizers), extracts and substances for tanning, poisonous substances for the destruction of ants and other harmful insects, rats, mice, Peruvian hares, and all other destructive animals, for instance: carbo-sulphide, cyanid of potash and the like.

*Class 2.*

Substances and products used for medical, pharmaceutical, veterinary and hygienic purposes; natural or prepared drugs,

mineral waters and medical wines and tonics, articles and substances for killing vermin, said substances being for domestic employment.

Such as: pharmaceutical and medical preparations, plasters, blister plasters, antiseptics, medicinal soaps and oils, medicinal products, extracts and essences, veterinary medicaments, fluids and powders for scabs, gauzes, medicinal bandages and cottons (wadding), substances for killing vermin, medicinal salts, herbs, grains, plants and barks.

#### *Class 3.*

Vegetable, animal and mineral substances in their natural or elaborated state, to be employed in manufacture, construction and domestic uses, and which are not included in other classes:

Such as: resins, mineral, vegetable and animal greases and oils, employed in manufacture, heating and lighting, dyes not mineral, fibres of cotton and all other vegetable textiles, wools, silks, bristle, hairs, feathers, corks, barks, bones, horse-hairs, tortoise shells, ivory, ambre, mother of pearl, coral, whalebone, horns in their raw state, or half, elaborated sponges natural or artificial, coals, solid and liquid fuels, lime, plaster, cements, candles and tapers in general, mosaics, timber for construction purposes, coal tars, asphalts, cinders (ashes), earths, cut or uncut stones, sand, bricks, floor tiles (flags), tubes not metallic, Dutch (enamelled) tiles, roofing tiles, slates, marbles, waxes, moulds in plaster or gypsum, terracotta, cement and similar materials for building or construction purposes.

#### *Class 4.*

Metals used in manufacturing works, elaborated or partly elaborated, not included in other classes. Products for casting, foundry, forging, smithery, and boiler making or tinkering.

Such as: iron, steel, bronze, lead, copper, zinc, tin and all other metals and alloys in whatsoever industrial form not included in another class; wires, wire textures, suspenders, trusses (beams), columns, channel (corrugated), iron products of smithery and foundry, tubes, pipes, tanks, casks and iron safes, alembics (stills), boilers, kettles and all other articles for boiler making or tinkering, bells.

#### *Class 5.*

Machines and apparatus destined for all classes of industries, not included in other classes, parts of same, accessories, fittings and appendages for diving or filtering purposes, machines, apparatus and implements and tools, for agriculture, ornithology, apiculture, pisciculture, dairy business, wine growing and its corresponding branches, and forestry, coopering.

Such as: pumps, generators for motors, hydraulic machines, steam, gas, naphtha, etc., machine instruments, boilers not included

in other classes, motors, sewing machines for embroidery and weaving, and needles for same; engines, machines and apparatus for extinguishing fires and conflagrations, ploughs, perforating and drilling machines, thrashing machines, mowing machines, presses, machinery for sugar refining, sugar mills, oil manufactories, crushing (grinding) mills, etc., water elevating machines, machines for skimming milk, bee hives, incubators (hatching machines), machines to cut trees, filters, buoys, injectors not included in other classes, casks and barrels in general, detruncating machines.

*Class 6.*

Surgical instruments for medicine, physics, mathematics, scientific and veterinary use, with the exception of those for electrical purposes.

Such as: lancets, sprinklers, pincers, scissors, bistouries, forceps, optical instruments, theodolites, eyeglasses (spectacles), telemetres, instruments for measuring, indicating or regulating (governing) the capacity, quantity, dimensions, power, force, volume, weight and proportion of whatsoever object or article; thermometers, barometers, kinematograph films and tapes for same, orthopedic apparatus, photographic machines and apparatus and of luminous projections and their accessories, compasses and reduction rules (squares), nautical compasses, metrometers, tuning forks, dehorning tools, apparatus for castration (gelding), etc., phonographic machines (apparatus), disks and cylinders for same.

*Class 7.*

Musical instruments and apparatus and their accessories. Music and apparatus producing music automatically.

Such as: pianos, harmoniums, fonolas, automatic pianolas, cylinders and music for same, printed music, musical instruments of percussion, string or wind, paper for printing music, capophones, string (cords) for musical instruments.

*Class 8.*

Jewelry and chronometry, gems, jewels, precious metals and stones, enamels, objects (articles) of gold, silver or platinum.

Such as: watches of all descriptions, jewels, filigrees, cigar boxes, match boxes and all other objects manufactured of precious metals, tools and utensils for watchmakers and jewelers.

*Class 9.*

Objects relating to ceramics and pottery in general, glassware, objects of bronze, electro plate and metals not precious, artistic bronzes and marbles, fancy objects, imitation jewelry, toys and

playthings, sporting articles, games, cards, ecclesiastical ornaments, painted objects of art, carved, sculptured, engraved, lithographed, and the like.

Such as: porcelain, crockery, majolica ware, terracottas, crystal ware, glassware, ivory, tortoise shell, lacquer, amber, bone, horn, celluloid, coral, mother of pearl, bronze, metal, onyx, agate, and all other precious stones, their similars and imitations; articles of ruolz, electro plate and metals not precious, as Reed & Barton, Christophle, etc., bronzes and artistic marbles, pictures, engravings, toys, dolls, sporting articles, cards, apparatus for gymnastics and fishing, images, chalices, cruet stands.

#### *Class 10.*

Hardware, cutlery, printing, ropes, cables, locksmithery (ironmongery), ironware, iron fittings, household articles of bazaar and tinware, cables not electric, articles of canvas, frames and rods, baskets and wickerware, etc.

Such as: tools and utensils in general with or without edge, sharpened or otherwise, not included in other classes, razors and shaving apparatus, cutlasses, daggers, knives, table services in general, poniards, paints and colors, varnishes, lacquers, painted papers, pencils, brushes, oils and turpentine for paint, ropes, cables, lines or marlines of hair or fibre, locks, bolts, fasteners, chains, anchors, and iron fittings, ironmongery or hardware objects, of tin, brass, and similar articles, cooking utensils, objects of enamelled or reinforced iron, nails, lockscrews, tents, flags, awnings, sails for vessels, cloth bags for all uses, isolating papers and cloths, hydrosopes or hydrometers, capsules for bottles, bungs of cork and metal, fire kindlers, floating tapers, basket and wicker objects in general, chains of every description, transmitting belts or belting in general, excepting those of rubber or caoutchouc.

#### *Class 11.*

Arms, explosives, utensils and accessories for hunting and war-like purposes, military equipments.

Such as: firearms of every bore and force, swords, bayonets, sabres, lances, torpedoes, ammunition for war and hunting (shooting), gunpowders, dynamite and all other explosives, empty cartridges, belts, carbine belts, military and shooting or hunting equipments, pyrotechnical products.

#### *Class 12.*

Machines, apparatus and elements for transporting purposes in general, parts of same and their accessories.

Such as: locomotives, rolling stock for railways and tramways, wire rails, rails, semaphores, winches, windlasses, rolling bridges,

transmitting belts, lifts, elevators for loads, worm (endless) screws, automobiles, aeroplanes, airships, balloons, motorcycles, hydroplanes, vessels, crafts, launches, motor boats, boats, dredges, floating derricks.

*Class 13.*

Furniture, joinery, decoration, tapestry, upholstery, mattress making, carpentry.

Such as: furniture of all kinds of metal, wood, japanned and others, carpets, curtains and tapestry, table covers, mattresses and springs for beds, mirrors, matting, oil cloths, linoleum, friezes and wainscotted rails, flooring, doors, windows, wood blinds, door-mats, coffins, hearses, wooden veneers for furniture in general.

*Class 14.*

Apparatus and objects and articles destined for purposes of heating, ventilation, lighting, refrigeration, hydrotherapeutics, sanitary articles, machines, apparatus and objects for cleaning generally, washing and cleaning of wearing apparel.

Such as: stoves, braziers, heaters, radiators, cooking ranges, boilers for central heating, heating apparatus, thermo-syphons, serpentines, ventilators, aspirators, air injectors, gas generators, lamps, handiworks for lighting, lanterns, lighthouses, luminous buoys, chandeliers, signal lanterns, beacon lights, freezing apparatus, machines for manufacturing ice and ice products, refrigerators, apparatus for shower baths, rain baths and baths in general, bathtubs, washstands, inodorous water-closets, bidets, syphons and all other sanitary objects, machines and apparatus for washing, wringing, ironing and drying clothes; cleaning apparatus for carpets, curtains and tapestry, dust aspirators, brooms, feather dusters, brushes, floor rags, dressed sheep skins, soaps, ointment, powders and liquids for cleaning metals, clothing, woods, skins, leathers, etc., starch, borax, crystals of soda, blue for washing, preparations for polishing and waxing floors, scourers for stains, etc.

*Class 15.*

Textures and tissues in general, knitted textures, table linen, linen or dry goods.

Such as: textures and tissues of wool, silk, linen, cotton, jute and all other vegetable fibres, impermeable or otherwise, mixtures of same, knitted goods, stockings, undershirts, ready-made articles of these textures for underclothing, tablecloths, napkins, sheets, pillows, pillow cases, blankets, quilts, counterpanes.

*Class 16.*

Ready-made clothing, footwear (shoeing), tailoring, hats, millinery, laces, fashions, narrow lace ware, fans, umbrellas, dry goods, gloves, perfumery, articles of Morocco leather.

Such as: dresses and costumes and suits for men, women and children of all ages, accessories for same, hempen sandals, boots, shoes, insoles, heel pieces for shoes, hats and caps, gaiters, braiding, galloon laces, tassels, embroideries, laces of all kinds, feathers, artificial flowers, articles for dressmakers, milliners, hatmakers, tailors, shoemakers, and seamstresses, linens, wools, silks, buttons, ribbons, threads, needles for sewing and other uses, etc., gloves, walking sticks, stays, fans, pocketbooks, ladies' bags and all other leather articles, neckties, extracts, essences, soaps, cosmetics and all other toilet articles, impermeable costumes.

#### *Class 17.*

Caoutchouc, india rubber, gutta percha in their raw state and in all forms or modes of preparation, and articles and objects manufactured with these substances, not being orthopedical, surgical or electrical.

Such as: ribbons or bands for transmission purposes, air chambers, tyres, and hoods for wheels, balls, toys, pipes, tubes, plates, threads, etc.

#### *Class 18.*

Articles and material for printing offices, booksellers, stationery shops, lithography, bookbinding, pasteboarding, teaching and drawing. Articles to be used in offices, typewriting machines, figure machines and registering machines. Inks.

Such as: machines, apparatus and presses to effect printing in whatsoever manner, printing types, cliches, type repositories, rulers, galleys, books and printed matter and reproductions in general, papers and cartons, with the exception of painted papers, boxes, cases and trays of pasteboard, paper bags, bibliorates, archiving, filing and classifying apparatus, machines and tools for the binding of books, charts, globes (spheres), blackboards, mural pictures, drawing tables, school benches, feathers, pencils, ink-stands, metal and rubber stamps, papers and tissues or textures prepared for reproducing purposes, slates.

#### *Class 19.*

Hides and skins in their raw state, elaborated and manufactured, not included in other classes. Saddlery and harnessing. Trunks, travelling articles and objects in general.

Such as: ready-made objects of hides (skins), harness, saddles, garnitures, whips, horse cloths (horse coverings), buckling articles, bits, bridles, stirrups, spurs, reins, trunk and travelling bags in general, belts, straps, portmanteaus (cloak bags), and stick and umbrella stands, hat boxes.

*Class 20.*

Electricity, electric machinery, ornaments, apparatus and accessories intended to generate power, heat and lighting, intended for telephonic purposes, telegraphs and wireless telegraphs.

Such as: dynamos, switches, resistances, magnets, apparatus for telegraph, telephones and wireless telephones or telegraphs, electric lamps in general, lamp stands, tulip shaped globes and reflectors, motors, rotators (alternators), cables and wires for electric uses, transformers, carbons for electric lamps, insulators, voltmeters, amperimeters and all other apparatus for measuring and experimental purposes, substances or textures for insulation, storage batteries.

*Class 21.*

Tobaccos, cigars and cigarettes, snuffs and articles for smokers:

Such as: pipes, cigar or cigarette holders, paper for making cigarettes, matches, automatic lighters, cigar or cigarette cases not of precious metals, cigar and tobacco cases in general, tinderboxes.

*Class 22.*

Alimentary substances or such as are employed as alimentary ingredients:

Such as: elaborated cereals, olive (sweet) and other edible oils, malt, dried and preserved fruits, flours, feculas, teas, coffees, sagos, chocolates, cocoa, preserves of meats, fruits, vegetables, shell fish and fish, spices, seasoning substances, Paraguayan tea, sugars, salt, honey, baking products (for bread making), pastry and confectionery, dairy products, meats, fish, birds, and eggs and game in their fresh state, vinegar, nutritive pastes, chicory, substances for infusions (inspirations), and hot beverages, alimentary substances for animals.

*Class 23.*

Beverages (drinks) in general, not medicinal, alcoholic or otherwise, alcohol.

Such as: wines, effervescing wines, ciders, beers, spirits, liquors, spirituous liquors, ferments, bitters and other bitter beverages, absinthe, syrups, sodas, mineral waters, natural and artificial mineral water not medicinal, aperitives, gaseous beverages (drinks).

*Class 24.*

Agricultural, horticultural, floricultural, and arboricultural products not included in other classes in virtue of their condition or preparation. Live animals.

Such as: vegetables, fruits and flowers in fresh condition; natural grains, corns, seeds, tubers (tubercles), bulbs and cereals, perennial plants and trees. Barks. Birds, fowls, quadrupeds and



other live animals not subject to the laws relating to distinction of animals by branding.

*Class 25.*

Divers articles not included in the preceding classes.

Art. 7. Be this communicated, published and entered in the National Register.

(Signed) Saenz Pena (President)  
Adolfo Mujica (Minister of Agriculture).

Decree of July 30, 1912, signed by the Ministry of Agriculture.

Under the old classification one could register for all classes under a single application, and it was not necessary to specify anything but the class to cover all articles included in the same.

By the new decree a separate application is required for each class in which registration is desired.

Marking of Goods: "Marca Registrada."

*Pure Food Law.*

Under date of April 16, 1906, a very stringent law was promulgated in the Argentine Republic, regarding the introduction and sale of proprietary articles. This provides that all proprietary remedies, domestic or foreign, for external or internal use, must have the authorization of the National Department of Hygiene before they may be placed on sale in the Republic, in default of which they shall be treated as secret remedies and their sale prohibited. For the purpose of obtaining such authorization, it is provided that application be made to the National Department of Hygiene, the samples necessary for analysis and specimens of the labels, bottles or other receptacles, and the prospectuses, advertisements and circulars of instruction which are to accompany the preparations when sold to the public being submitted with the application. The preparation is then analyzed, its correspondence with the formula and its benefit or utility determined. The advertising matter is also scrutinized with a view to determining whether it is free from deceptive or excessively exaggerated statements regarding the composition or curative properties of the remedy. If the Commission shall deem the remedy open to no objection upon this score, the proper authorization will be granted. Thereafter, the remedy may be offered to the public, but only in connection with the prospectuses and other advertisements that have been submitted to the Commission. Any modification of any sort introduced in the advertising matter that accompanies or exploits the preparation shall be deemed by the Commission a proper ground for withdrawing the author-

ization and imposing the fine provided by the law. In the case of remedies already authorized to be sold in the Argentine, the space of one year is provided for compliance with the new statute.

National or foreign medicinal preparations or those called "specifics," whether they be for internal or external use, require an authorization from the Board of Health before they can be placed on sale, otherwise they will be considered as "secret medicines," the sale of which is prohibited.

The publication of advertisements offering for sale the specialties, the sale of which have not been duly authorized by this Department, is also prohibited. (Art. 75.)

Those who solicit authorization to sell the articles mentioned in the foregoing article, must comply with the following rules:

(a) The application must be filed before the Board of Health and be accompanied by the quantity of the preparation which is judged necessary for the consecutive analysis, by the qualitative and quantitative formula, by the recipients, labels, prospectus and other indications and instructions, which the preparation will bear on being placed on sale for the general public.

To this must be added a summary of the physiological and therapeutic principle on which the preparation is based, and the reason of or the hygienic or pharmacological gain which this satisfies. (Art 76.)

The qualitative formula of the specific should be clearly printed on the label of the recipients, indicating the quantity of the active substances contained therein.

The names of the proprietor and the address of the factory must also appear on the recipients. (Art. 77.)

The Board of Health will submit for analysis the preparations filed, and the fees prescribed by the law 4039 having been previously paid, will place them before the Special Committee for their decision. (Art. 78.)

In order to dispatch this matter and to decide as to the acceptance or refusal of the same, the Committee of Specialties must carefully consider, amongst others, the following principles:

(a) The proportion, verified by the analysis which they deem it necessary to make, of the product and of the declared formula.

(b) The utility and advantage of any nature obtained by the importation of the new preparation.

(c) That in the advertisements and prospectus of the same, the corresponding discretion be observed, so that it will not implicate deceit or exaggeration which tend to compromise the ethics of the profession. (Art. 79.)

The Committee of Specialties, mentioned in the above article is to be constituted by the following officers of the Board of Health: The Chief of the 5th Section; the Inspector General of Pharmacies or Drug Stores; the Chief of the Chemical Office.

To these officers must be added two distinguished acting chemists, strangers to this department, who will be elected by the president and who may be re-elected.

The presidency of this committee will be filled by the Inspector General of Health of the Departamento Nacional de Higiene (Board of Health). (Art. 80.)

The authorization conferred by the board for the sale of the specialties, can only be referred to in the advertisements, etc., in the following terms; "venta autorizada por el Departamento Nacional de Higiene," "Certificado No. ," "Expendio libre" or "Expendio bajo receta." (Art. 81.)

The authorization of the Board having been obtained for the sale of any specialty, this cannot be offered for sale to the public either by the chemists or agents in the prospectus which accompanies the preparation or in the advertisements in the newspapers, under any other form than that expressly accepted by the Committee. Any variation in these, however slight, may cause the withdrawal of the authorization granted or the application of the fines cited in Art. 117 of the law. (Art. 82.)

The manufacturers or importers of specialties the formula of which is clearly written on the label and which is at present on sale without the said authorization of the Board of Health, are allowed a period of six months within which to comply with the prescription of Art 75. (Art. 83.)

The vaccines, serum, toxines and the products of organic origin chemically undefined and all other products of unknown composition, as preventive, curative or diagnostic agents, by means of injections against any infectious disease, cannot be placed on public sale or given away gratis, without a previous or special authorization of the Board of Health. (Art. 87.)

Those who violate the prescription of Arts. 75 and 111, will suffer a fine of \$100 to \$600 national currency. (Art. 119.)

In the case of repetition the President of the Board of Health can double the fine established by this regulation, but always within the maximum marked by law of \$1,000.

*Extract of Law N.º 4039.*

Art. 1.º From the publication of the present law, the analysis effected by the Chemical Office of the Departamento Nacional de Higiene, will be subject to the following tariff:

1.º Complete analysis of waters, from a higienic point of view, comprising all the mineralizing substances, \$50.

2.º Analysis of waters, from a drinkable point of view, and without the determination of all the mineralizing substances, \$10.

3.º Analysis of wines, foods, commercial products, unless their object is to appeal or contradict the report of other offices, according to the data asked for, \$10.

4.° Analysis of earth, from an higienic point of view, air, gas and vapors, from an agricultural point of view, \$300 to \$500.

#### *Analysis of Specialties.*

1.° Analysis of medicinal wines, the quantitative and qualitative determination of the same, \$10 to \$20.

2.° Analysis of water for the hair, perfumery, pomades which contain antiseptic substances, for the determination of each substance, \$5.

3.° For other medicinal specialties with a preparation of alcoholides and mixtures, for each substance, \$8.

4.° Complete analysis of mineral water, with the investigation of rare bodies, \$200.

5.° Analysis of mineral water comprising only the determination of the principal mineralizing substances, \$10 to \$20.

6.° Baths, natural sediments, etc., for each substance, \$10.

#### DECISIONS.

##### *First Registrant.*

The Argentine law confers the exclusive right to the use of a trade mark upon the registrant of the mark irrespective of the question of priority of use. A decision has been rendered by the Federal Court of Argentine in which the effect of the Argentine law was confirmed.

The plaintiff in this action had registered certain marks in the Argentine Republic for phonographic records. These marks it appears were, in the United States, the property of an American firm from whom the complainant, as a matter of fact, purchased his goods. The defendants undertook to import into the Argentine goods purchased from the same American manufacturer under the same marks. The complainant instituted a criminal proceeding against the defendants for the infringement of his marks. It was held that the Argentine law granting to the registrant of a mark the exclusive right of ownership therein, no question of the right to the mark in a foreign country was in any way relevant; that a foreign trade mark was entitled to no protection in the Argentine except as it had derived the right to such protection from registration under the law. The argument in favor of the position taken by the Argentine Courts is well stated in the following language:

“By Article 68 is clearly indicated the protection to be extended to foreign trade marks for the purpose of encouraging manufacturers or merchants of other countries to seek our markets, to promote by fair competition the development of industries, and to introduce and sell their products, without permitting the negligence of those whose trade is of large proportions to oppose

the activity and the well planned course of our national commerce. This is the reason why there has been fixed a term of four months—counting from the date of registration at home—within which they may present their applications; it is indisputable that those who have not availed themselves of this privilege have abandoned their rights and can not prevent others representing larger interests from registering trade marks identical with or similar to those which they have abandoned to their fate.

“If we accept as true defendant’s views in this respect, we reach the unreasonable result that it is impossible to insure the permanence of a trade mark, since it might happen that an identical mark existing in Europe, may not have been used and may therefore be unknown in this market. Whoever then might wish to annul the mark could order goods from Europe under this mark and then petition for its annulment. What else would this be but a subterfuge to support his petition of annulment? Such action can not be regarded as within the scope of honest rivalry, but would constitute unfair competition which every business man should avoid.” (*Cassels y Cia vs. M. E. Repetto y Cia, V. Patentes y Marcas, 397.*)

Whereas in the Argentine, the law provides an ample protection for the marks of those who see fit to comply with its requirements, much may be said in favor of the contention that whatever loss is sustained by foreigners through the piracy of their trade marks is due to their own neglect and casts no reproach upon the government under which it occurs.

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In a decision rendered July 21, 1910, the Argentine Federal Court held that foreign words which when translated into Spanish are the equivalents of symbols already registered, cannot constitute trade marks of third parties. The court said that “the trade mark law in authorizing the use of fanciful words meant to refer to the composition of those which express nothing and mean nothing and not to the introduction of foreign words which always have their own significance.”

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The complainant Rhen registered the mark “Augusta” for certain goods. The defendant imported and sold goods of the same class bearing the same mark. The defense was that the infringing mark was made and affixed to the goods in Europe, and that, therefore, the defendant had committed no offense. Decision was rendered for the complainant and the defendant was adjudged to have committed infringement, the court holding that if such a defense could be accepted it would only be necessary, in order to escape the penalty for infringement, to have the labels made outside of the country. It held that infringement is committed not only by the actual imitators of a mark, but by any

one who sells or places on sale goods marked with the imitation, or even bearing authentic marks, when this last is without the knowledge of the proprietor of the registered mark. (E. Rhen vs. J. Norris, decision rendered May 30, 1908.)

The name of a product cannot constitute a mark. "Malted Milk," notwithstanding that they are words foreign to the language, cannot be considered as a mark if they indicate the class of article. (Borden's Condensed Milk Company vs. Horlick's Food Company. Decree of the Federal Court, Buenos Aires, May 27, 1908.)

"The office of marks can, of itself, legally refuse the registration of a mark, even without opposition, when it is of the opinion that the mark sought to be registered is the same as or similar to and can cause confusion with another or others already registered." (Decision of Federal Court, Nov. 7, 1905.)

IMITATION OF A MARK—Use of the mark alleged to infringe prior to the registration of the mark which serves as ground for the action exempts from the penalty, but the defendant should abstain from continuing to use the mark. (Decision of Federal Court, V. Bosch y Grau vs. J. M. Adoue y Cia, April 12, 1909.)

#### *Priority of Use.*

A French firm several years ago registered its mark in the Argentine Republic but neglected to renew the registration at the end of the original term of ten years. A discharged employe of the firm took advantage of the fact and registered the mark in his own name. Thereupon the firm appealed to the courts for redress. In a decision dated Oct. 17, 1902, the Federal Courts of Argentine decided that the rights of the original owner had been extinguished by the lapse of their registration, and that the title of its ex-employe thereto was now indefeasible. (Ch. Lorilleux y Cia vs. A. Gares, 2 Patentes y Marcas, p. 529.)

A German, domiciled in the Argentine, applied to the Union Schreibmaschinen Gesellschaft in Berlin, for the agency in the Argentine for typewriters known as the "Mignon." The negotiations came to nothing, whereupon the applicant had the name registered in the Argentine as his trade mark, and now when the company desires to get into that market, they have the alternative of paying him one thousand dollars, which he asks for the assignment of the mark, or giving their machines another name, a matter which would be very expensive on account of the changes to be made in electrotypes, circulars and other advertising matter.

The firm Gilmore, Thompson & Co., of Glasgow, having failed to renew their registration for the mark "Royal Blend" for whis-

key, the mark was registered by another company, and the registrants were forced to change their mark, rather than pay five thousand dollars in gold for the surrender of the registration.

A trade mark well known in a foreign country, having been introduced into the Argentine, was appropriated before its registration by the rightful owner and his rights thereby cut off. The appellate court said, "Whatever may be the objections that can be made to the system adopted by our law of marks, it is certain that according to that system, registration confers an exclusive right of property in the mark registered, in favor of him who registers, regardless of the fact that any other person has used the said mark as his own in commerce, without having registered it."

This decision reiterates a principle now so familiar that the case would not have been worth reporting, except as it reverses the earlier decision, which at that time we looked upon as a judicial recognition of the iniquity of the Argentine law, and as in some measure restricting the absolute character of the doctrine that the title to the mark might be obtained by registration, irrespective of the circumstances of prior use or equitable title. (*Breyer Hnos. vs. Francalanci, Patentes y Marcas, 1908, p. 496.*)

#### *Protection of Trade Names.*

Section 43 of the Argentine Trade Mark Law, intended for the protection of trade names, requires any person, when he shall engage in a line of business in competition with another person of the same name, to use his name in connection with such modification or distinguishing characteristic that it shall be visibly distinct from the name as employed by the first user. While the Argentine law recognizes that the benefit of this act is extended to corporations, it has nevertheless been held that a foreign corporation which has not complied with the provisions of the Argentine commercial code authorizing it to do business within the Republic, cannot avail itself of the protection accorded by this section of the law. This is an important matter, inasmuch as it is conceivable that the same principle might be applied in the case of an action brought by such a corporation for the infringement of its registered trade mark and should the principle be so applied, it might be found that the registration, in many instances was quite useless except for the purpose of preventing the registration of the mark by another. (*J. Hallet Marshall vs. Marshall Sons & Co., Patentes y Marcas, 1909, p. 307.*)

The Argentine trade mark law provides that the names and portraits of individuals shall not be used as marks without their consent, or, in the case of deceased persons, that of their relatives to the fourth degree.

The Federal Court has held that, in order to invoke this provision of the law and oppose a registration because in violation thereof, it is not necessary that the opponent be the owner of a registered trade mark in the name or portrait. If, as the court remarks, this were so, it would in many cases nullify the right, recognized and secured by the statute. It is enough that the opponent's right in his own name be invaded. (*Marshall vs. Bash, Patentes y Marcas, 1911, p. 88.*)

The meaning of Article 4 of the Trade Mark Law of the Argentine Republic, forbidding the registration of the name or portrait of a person without his consent or that of his heirs if he be deceased, has been explained in a decision of a federal judge at Buenos Aires. A certain firm had registered as a trade mark the name of a retired partner, Jaccard, but without the latter's authority or consent. The name had, prior to the dissolution of the partnership, appeared in the firm name, but it had not been used as a trade mark upon goods. Jaccard having applied for the registration of the name himself, registration was refused, because of the previous registration of his former partners. The case was brought before the court for decision, and thereupon the cancellation of the previous registration was ordered and the registration of his name in favor of Jaccard was directed.

It was argued by the first registrants that the provisions of the law did not extend to mere surnames; that it applied only where the entire personal and family name was registered. They claimed that the name Jaccard belonged to a multitude of other persons beside the applicant, and it did not rest with one of these persons to control its use. The argument that the provision of the law applied only to the full individual name of the party and not to the mere surname was overruled. The error of this interpretation, the court said, was evident, in view of the fact that the provision was for the benefit not only of a living person whose name was used, but of his heirs, that is to say, of all persons of the same family name, though their personal names are different. (*Jaccard vs. Perusset & Didisheim, Patentes y Marcas, 1911, p. 165.*)

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By the Argentine trade mark law it is provided that the names or portraits of individuals shall not be valid as trade marks without the consent of the parties or their heirs. A suit having been brought for infringement of a trade mark consisting essentially of the name "San Martin," the reference of which as a proper name appears to have been fixed by the presence in the registration of the portrait of Gen. Jose San Martin, the defendant interposed the plea that this mark was not valid, for the reason that it had been registered without the consent required by the



trade mark law, of the heirs of the deceased celebrity. The court, however, said that under the decisions of the highest court of the Argentine, this objection was not one that could be interposed by any person other than the parties injured, to-wit: the person whose name was thus improperly used, or his descendants. In other words, that the registration, could not be attacked collaterally upon this ground, but only directly. This decision, the Federal Court on appeal has now affirmed. (*Estrada & Co. vs. Sarramea, La Jous & Co., Patentes y Marcas, 1909, p. 457; 1910, p. 170.*)

The Argentine Republic has embodied in its trade mark law certain sections which have furnished the model for similar legislation in several of the Spanish American states. The law of November 23, 1900, (Art. 42-47), provides that any commercial name shall be protected against the use of a name so similar thereto as to be likely to deceive, without the necessity of registration, except in the case where it forms part of a trade mark. The value of this apparently salutary provision of the Argentine law is, however, very much impaired by a recent decision of the Argentine courts, wherein it was held that a foreign corporation which did not have any established agency or place of business within the Republic, could not claim the benefit of these sections of the statute. The reason given was that a corporation established in the Republic would have its name inscribed upon the proper official records and thereby be made publicly known within the country, whereas a corporation not established in the country, in order to secure protection to its trade name must register that name as a trade mark under the trade mark law in the regular way.

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## AUSTRALIAN COMMONWEALTH

Under this head are united the states of New South Wales, Victoria, South Australia, Queensland, Tasmania and Western Australia.

### NEW SOUTH WALES

The area of this state is 310,700 square miles. The population is estimated at about 1,824,580.

COMMERCE—The principal articles of export are wool, meat (extract and preserved),—mutton, silver, copper and tin. Coal exists in large quantities, the output being about 7,632,138 tons. The output of gold is about 353,987, fine ozs. There are also extensive iron deposits. It is, however, upon the production of wool that, like the other states of Australia, its wealth principally depends. In 1910 wool to the value of about £12,250,758 was exported from this state.

## VICTORIA

The area of the state of Victoria is 87,884 square miles, or 56,245,760 acres, being slightly larger than Great Britain. Although one of the smallest of the states comprised within the Australian Commonwealth, it is populous and thriving. The population is about 1,511,003.

COMMERCE—The exports consist principally of wool, gold, preserved and frozen meats, dairy produce, hides, skins, etc.; cotton and woolen cloth, apparel, books, paper, iron, machinery, etc., are the principal articles imported.

## SOUTH AUSTRALIA

The area of this state, which extends right across the island continent from Kangaroo Island on the southern side to Melville Island on the north (including the northern territory) embraces 903,690 square miles, ranking after Western Australia in extent of territory.

The northern territory contains an area of 523,620 square miles.

The estimated population is: South Australia proper, about 600,000; Northern Territory about 7,000.

## QUEENSLAND

This state comprises the northeastern portion of the continent of Australia; its northern extremity is Cape York, and its southern on the coast, Point Danger, being bounded on the south by the State of New South Wales.

The area of the state is 668,497 square miles, and its seaboard about 2,250 miles. The population is about 700,000.

COMMERCE—The exports consist of copper ore and smelted copper, pearl shell and beche de mer, tin, green fruit (bananas, etc.), gold, hides and skins, sugar tallow, frozen, preserved and salted meat, timber and wool.

## TASMANIA

This island is situated at the extreme south of Australia, from which it is distant 120 miles, being separated by Bass Strait.

The area of the colony, including the islands, is 26,215 square miles. The population is about 200,000.

The soil is rich in minerals, coal, copper, silver, tin and gold being raised to a considerable extent; almost the entire trade is carried on with Australia and Great Britain. The total gold production during 1910 was about 100,000 fine ounces.

## WESTERN AUSTRALIA

Western Australia, the youngest of the Australian states, has since the discovery of the gold fields some years ago, made immense strides in population, wealth and importance and promises to be one of the leading states. The railways may be taken as a sample of its increasing prosperity.

The area is about 975,920 square miles, and the population about 500,000.

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MONEY, WEIGHTS AND MEASURES—Same as Great Britain. The cental of 100 lbs. is also used.

*Law.*

Act of December 21, 1905.

*Duration.*

The registration shall be for a period of fourteen years, but may be renewed from time to time.

*Who May Apply.*

Any person claiming to be the proprietor of a trade mark may make application to the Registrar for the registration of his trade mark. (Sec. 32.)

*What May Be Registered.*

The essential particulars of a registrable trade mark shall be one or more of the following: (a) a name or trading style of a person printed, impressed or woven in some particular and distinctive manner; or (b) a written signature or copy of a written signature of the person applying for registration thereof or some predecessor in his business; or (c) a distinctive device, mark, brand heading, label or ticket; or (d) an invented word or words having no reference to the character or quality of the goods and not being a geographical name used or likely to be understood in a geographical sense.

The additional matter which may be added to the essential particulars of a registrable trade mark shall be: (a) any letters, words, or figures; or (b) any combination of letters, words, or figures, or of any of them. (Secs. 16 and 17.)

*Not Registrable.*

(a) The words "Trade Mark," "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is forgery," or words of like effect; or (b) a represen-

tation of the King, the Queen, or any member of the royal family, or of the royal crown, or the word "Royal," or any word, letter or device indicating royal or governmental patronage, or a representation of the royal arms or of the national flag of the United Kingdom, or of the flag of the commonwealth or of the national arms of the United Kingdom or of the arms or seal of the commonwealth or any state, or a representation of any living person without his written consent. (Secs. 18 and 19.)

In determining whether any particular of a trade mark is distinctive, regard may be had in the case of a trade mark in actual use to the extent to which user has rendered the trade mark or the particular distinctive for the goods with respect to which the trade mark is sought to be registered. (Sec. 20.)

A trade mark may be limited in whole or in part to a particular color or colors, and in case of any application for the registration of a trade mark the fact that the trade mark is so limited shall be taken into consideration by any tribunal in determining whether it is distinctive or not. If a trade mark is registered without limitation of color it shall be deemed registered for all colors. (Sec. 21.)

A trade mark must be registered in respect of particular goods or classes of goods as prescribed. (Sec. 23.)

Except by order of the court, the Registrar shall not register in respect of goods a trade mark identical with one belonging to a different proprietor which is already on the register in respect of the like goods, or class of goods, or so nearly resembling such a trade mark as to be likely to deceive.

Where the name or a representation of a living person or a person believed by the Registrar to be living appears on a trade mark, the Registrar may require the applicant to furnish him with the consent of that person to the name or representation appearing on the trade mark before he proceeds with the registration of the trade mark. (Sec. 26.)

#### *Associated Marks.*

Where application is made for the registration of a trade mark so nearly resembling a trade mark of the applicant which is already on the register as to be likely to deceive or cause confusion if used by a person other than the applicant, the Registrar may require as a condition of registration that the trade marks shall be entered on the register as associated trade marks. (Sec. 29.)

#### *Series of Marks.*

When a person claiming to be the proprietor of several trade marks, which while resembling each other in the essential particulars thereof, yet differ in respect of (a) statements of the goods for which they are respectively used, or proposed to be

used; or (b) statements of number, price, quality or names of places, seeks to register such trade marks, they may be registered as a series in one registration.

*Mode of Application.*

An application for the registration of a trade mark must be made in writing, and must set out the name and address of the applicant, and his address for service, and must contain a representation of the trade mark, and be accompanied by twelve additional representations thereof, which shall be facsimiles of the representation contained in the application. Seven of the additional representations are to be affixed as hereafter provided, and five unaffixed.

An application must be signed by the applicant or by an agent on his behalf, but the following shall be sufficient.

(a) If the application is made by a firm, the firm's signature thereto may be made by any member of the firm.

(b) If the application is made by a body corporate or an association, it may be signed by a director or by the secretary or some principal officer thereof, on behalf of the body corporate or association.

Where an application is signed by an agent on behalf of the applicant, the application must be accompanied by an authority by the applicant to the agent.

Where possible, a representation of the trade mark must be affixed to the square in the form of application.

Where the representation exceeds the square in size, the representation must be mounted on linen, and part of the mounting affixed to the square, and the rest folded over.

Where the representation cannot be affixed to the square in the form of application, a specimen or copy of the trade mark may be lodged with the application either in full size or on a reduced scale, and in such manner and form as the Registrar directs.

Where a trade mark contains words other than English words or in other than Roman characters, a translation of the words shall, if the Registrar so requires, be indorsed on or affixed to the application, and each additional representation of the mark lodged with it.

Where an application relates to a series of trade marks, a representation of each trade mark of the series shall be affixed as aforesaid to the form of application, and to each of the accompanying Forms C.

Where an application is for the registration of a trade mark registered in one or more States under any State Trade Marks Act, it must be accompanied by a facsimile of the trade mark as registered in each State, as well as by the additional representations.

The Registrar may, if dissatisfied with the representation of a trade mark, require a fresh representation, either before he proceeds with the application, or before he registers the trade mark.

Every application for registration of a trade mark shall be indorsed with the actual time of its receipt, either at the Trade Marks Office or at a Sub-office. For the purposes of this regulation, the time at which an application is lodged in a State, according to the standard of legal time in that State, shall be reckoned as the actual time of lodgment of the application.

Applications for registration of trade marks sent by prepaid letter through the post, shall, as far as practicable, be recorded in the order in which the letters containing them were delivered at the Trade Marks Office or Sub-office; or in the case of letters delivered at the same time, in the order in which they were opened.

On receipt, of the application the Registrar shall furnish the applicant with an acknowledgment thereof.

If, after considering the Examiner's report, the Registrar is of opinion that the trade mark is in compliance with the Act and no bar to its registration exists, he shall accept the application.

If the Registrar is of opinion that the trade mark is not in compliance with the Act or that some bar to its registration exists he shall give notice thereof to the applicant. The notice may state the grounds of the Registrar's opinion and shall inform the applicant that he is entitled to be heard personally or by his agent before the Registrar deals with the application.

Within fourteen days from the receipt of the notice or such further time as is fixed by the notice, the applicant shall notify the Registrar whether or not he desires to be heard upon the matter, and in default of his doing so the application shall be deemed to be abandoned.

If the applicant notifies the Registrar that he desires to be heard the Registrar shall fix a time for the hearing, and shall give the applicant not less than ten days' notice of the time so fixed, and if the applicant fails to appear personally, or by his agent, at the time fixed for the hearing, the application shall be deemed to be abandoned.

At the hearing, the Registrar shall hear the applicant, and shall consider the application, and shall decide whether to accept it with or without modifications or conditions, or to refuse it.

Every application for the registration of a trade mark which has been accepted shall be advertised by the Registrar in the Official Journal.

For the purposes of the advertisement the applicant may be required to furnish a block or electrotype (or more than one, if

necessary) of the trade mark, of such dimensions as is directed by the Registrar, or such other information or means of advertising the trade mark as is required by the Registrar; and the Registrar, if dissatisfied with any block or electrotype furnished by the applicant may require a fresh block or electrotype before proceeding with the advertisement.

When an application relates to a series of trade marks, the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of any or of each of the trade marks constituting the series; and the Registrar may, if he thinks fit, insert with the advertisement of the application a statement of the extent to which the several trade marks differ from one another.

If no representation of the trade mark is inserted in connection with the advertisement, or if the trade mark is limited to a particular color or colors, and in all cases in which he deems it desirable, the Registrar shall refer in the advertisement to the place where a specimen or representation of the trade mark is deposited for exhibition.

### *Opposition.*

Where a ground of opposition to the registration of a trade mark is that it is identical with a trade mark already registered under the Act or a State Trade Marks Act, in respect of the like goods or class of goods, or so nearly resembles the latter trade mark as to be likely to deceive, the notice shall state the date of registration, and the number of the registered trade mark.

In any case of opposition to the registration of a trade mark the Registrar may, at the request of the parties or otherwise, order that all or any part of the evidence shall be taken viva voce or by affidavit and may give such directions as are required in that behalf, but, in the absence of any direction by the Registrar, the evidence in any such case shall be by declaration and shall be given as follows:

- (a) Within one month after the receipt of the counter-statement the opponent shall leave at the Trade Marks Office the evidence he adduces in support of his opposition, and deliver to the applicant copies thereof.
- (b) Within one month after the delivery to the applicant of the opponent's evidence, the applicant shall leave at the Trade Marks Office his evidence in answer, and deliver to the opponent copies thereof.
- (c) Within fourteen days after the delivery of the applicant's evidence the opponent shall leave at the Trade Marks Office his evidence in reply, and deliver to the applicant copies thereof. The last-mentioned evidence shall be confined to matters strictly in reply.

- (d) No further evidence shall be left on either side except by leave of the Registrar upon the written consent of the parties or by special leave of the Registrar given on an application made to him. Either party making the application shall give notice thereof to the opposite party, who shall be entitled to oppose the application. Application for leave to lodge further evidence shall be accompanied by the prescribed fee.
- (e) Where exhibits are referred to in a declaration, but are not attached thereto, the party adducing the evidence shall either furnish copies or impressions thereof to the other party, or send the originals to the Trade Marks Office. The originals must, if the Registrar so requires, be produced at the hearing.

If the opponent fails to leave, within the time allowed, declarations in support of his opposition, the opposition shall be deemed to have been abandoned.

If the applicant fails to lodge, within the time allowed, declarations in answer to opponent's declarations in support of the opposition, or to state that he intends to reply upon the documents lodged with the application, the application shall be deemed to have been abandoned.

On the completion of the evidence, the Registrar shall appoint a time for the hearing of the case, and shall give the parties at least seven days' notice of the appointment.

#### *Registrar's Jurisdiction.*

The law officer, on appeal from the Registrar has, in a decision, determined this question.

In the case in question, the application had been accepted and published and the time for filing opposition had expired. After the acceptance of the application, however, four subsequent applications for registration of the same mark were received. Section 27 of the act provides that, when several persons apply to be registered as the proprietor of the same trade mark the Registrar may refuse to register the mark and require the submission of the controversy to the court. Under this section the Registrar claimed the right to require the submission of the applicants' rights to the court at whatever stage the controversy might arise. The law officer, however, held that he retained no such right, after having once accepted the application. If this were not so, all that would be necessary to prevent the registration of a mark, would be for the party seeking to prevent its registration to file an application before the registration had actually been made and file an additional one before the controversy raised by the first was disposed of. Thus the registration could be delayed indefinitely. The law officer held that the act gave those who wished to oppose



applications that had been accepted, every opportunity to do so, by the designation of a statutory period for the purpose. Thus it was clearly intended that the application having been once accepted, the mark should be registered unless opposed. (In *re Burrows & Co.*, Australian Off. Jour. of Trade Marks, 1910, p. 506.)

### *Prior Use.*

That delay in making the application is not a ground for refusing cancellation of a trade mark in a proper case was decided by the high court of Australia.

The appellant had sold in Tasmania, from the year 1882, and had advertised some time prior thereto, a tonic preparation under the name of "phosferine." About 1892, the respondent began to sell a similar preparation under the name of "Gould's phosferine" and registered the word "phosferine" alone, in 1894, under the merchandise marks act. In 1907, thirteen years after the registration, the appellant moved before the supreme court to have the mark expunged. The motion was dismissed, but upon appeal to the high court it was held that the lapse of time was no bar, that the respondent's mark in any case was not the word alone as registered, but the words "Gould's phosferine," and he was not therefore entitled to register the latter word only; that, moreover, the appellant was prior in date of use, and priority of use is the foundation of property in a trade mark. (*Ashton & Parsons, Ltd. vs. Gould*, 7 Commonwealth Law Reps., 598.)

In the year 1906, application was made for the registration of a mark consisting of a circle surrounding a shield, the latter being surmounted with a crown and having the word "premier" and other features upon it. The application was opposed by the registered owner in New South Wales since 1890 of the words "premier brand." It was ordered by the Registrar that the registration be limited to the states outside of New South Wales, but the court on appeal held that the case was one of "honest concurrent user" within the provisions of the commonwealth trade mark act, and that the registration should be made to extend to the entire commonwealth. (*Bedgood & Co. vs. Graham*, 7 Commonwealth Law Rep. 752.)

It has been quite a common practice for the agents of foreign firms to apply for and obtain registration of the trade marks of their principals, but such registrations are illegal and can be cancelled by a proceeding instituted by the rightful owner of the mark.

Australia is one of the countries in which owners of trade marks do not forfeit their rights entirely by a failure to obtain proper protection for their marks in due season. It goes without saying, however, that the expense of procuring the cancellation of a wrongful registration and of re-establishing a title that has

been clouded by a hostile registration, is much greater than would be the expense of providing against such a contingency in the first instance, through a registration made by the lawful owner himself.

#### *When Trade Mark Deemed Applied.*

A trade mark shall be deemed to be applied to anything if it is woven in, impressed on, worked into, or annexed or affixed to, the thing.

A trade mark shall be deemed to be applied to goods if (a) it is applied to the goods themselves; or (b) it is applied to any covering, label, reel, or thing in or with which the goods are sold or exposed or had in possession for any purpose of trade or manufacture; or (c) it is used in any manner likely to lead to the belief that it refers to or describes or designates the goods.

"Covering" includes any stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper; and "label" includes any band or ticket. (Sec. 92.)

#### *Requirements.*

Power of attorney, appointment of agent, one electrotype not exceeding two inches square and twelve facsimiles.

#### *Summary of Classes.*

	CLASSES.
Raw or partly prepared substances.....	1 to 5, 46
Machines and tools.....	6 to 12, 18, 19
Mineral and metal goods.....	13 to 17
Explosives, naval sundries, carriages.....	20 to 22
Cotton, textiles, stuffs, skins.....	23 to 37
Clothing, rubber goods.....	38, 40
Food, drink, tobacco.....	42 to 45
Furniture, candles, soap, toilet goods.....	41, 47, 48
Paper, stationery, games, sporting goods.....	39, 49
Miscellaneous ( <i>i. e.</i> , not in other classes).....	50

CLASS 1. Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.

CLASS 2. Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.

CLASS 3. Chemical substances prepared for use in medicine and pharmacy.

CLASS 4. Raw or partly prepared vegetable, animal, and mineral substances used in manufactures, not included in other classes.

CLASS 5. Unwrought and partly wrought metals used in manufacture.

CLASS 6. Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines included in Class 7.

CLASS 7. Agricultural and horticultural machinery, and parts of such machinery.

CLASS 8. Philosophical instruments, scientific instruments and apparatus for useful purposes. Instruments and apparatus for teaching.

CLASS 9. Musical instruments.

CLASS 10. Horological instruments.

CLASS 11. Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals.

CLASS 12. Cutlery and edge tools.

CLASS 13. Metal goods not included in other classes.

CLASS 14. Goods of precious metals (including aluminum, nickel, Britannia metal, etc.), and jewelry, and imitations of such goods and jewelry.

CLASS 15. Glass.

CLASS 16. Porcelain and earthenware.

CLASS 17. Manufactures from mineral and other substances for building or decoration.

CLASS 18. Engineering, architectural, and building contrivances.

CLASS 19. Arms, ammunition, and stores not included in Class 20.

CLASS 20. Explosive substances.

CLASS 21. Naval architectural contrivances and naval equipments not included in Classes 19 and 20.

CLASS 22. Carriages.

CLASS 23. (a) Sewing cotton; (b) cotton yarn.

CLASS 24. Cotton piece goods of all kinds.

CLASS 25. Cotton goods not included in Classes 23, 24, or 38.

CLASS 26. Linen and hemp yarn and thread.

CLASS 27. Linen and hemp piece goods.

CLASS 28. Linen and hemp goods, not included in Classes 26, 27 and 50.

CLASS 29. Jute yarns and tissues, and other articles made of jute, not included in Class 50.

CLASS 30. Silk-spun, thrown, or sewing.

CLASS 31. Silk piece goods.

CLASS 32. Other silk goods not included in Classes 30 and 31.

CLASS 33. Yarns of wool, worsted or hair.

CLASS 34. Cloths and stuffs of wool, worsted or hair.

CLASS 35. Woolen and worsted and hair goods, not included in Classes 33 and 34.

CLASS 36. Carpets, floorcloth and oilcloth.

CLASS 37. Leather, skins, unwrought and wrought, and articles made of leather, not included in other classes.

CLASS 38. Articles of clothing.

CLASS 39. Paper (except paperhangings), stationery, and bookbinding.

CLASS 40. Goods manufactured from India rubber and gutta percha, not included in other classes.

CLASS 41. Furniture and upholstery.

CLASS 42. Substances used as food, or as ingredients in food.

CLASS 43. Fermented liquors and spirits.

CLASS 44. Mineral and aerated waters, natural and artificial, including ginger beer.

CLASS 45. Tobacco, whether manufactured or unmanufactured.

CLASS 46. Seeds for agricultural and horticultural purposes.

CLASS 47. Candles, common soap, detergents; illuminating, heating, or lubricating oils; matches; and starch, blue, and other preparations for laundry purposes.

CLASS 48. Perfumery, including toilet articles, preparations for the teeth and hair, and perfumed soap.

CLASS 49. Games of all kinds and sporting articles not included in other classes.

CLASS 50. Miscellaneous, comprising the following subclasses:

SUBCLASS 1. Goods manufactured from ivory, bone, or wood, not included in other classes or subclasses.

SUBCLASS 2. Goods manufactured from straw or grass, not included in other classes or subclasses.

SUBCLASS 3. Goods, manufactured from animal or vegetable substances, not included in other classes or subclasses.

SUBCLASS 4. Tobacco pipes.

SUBCLASS 5. Umbrellas, walking sticks, brushes, and combs.

SUBCLASS 6. Furniture, cream, plate powder.

SUBCLASS 7. Tarpaulins, tents, rickcloths, rope, twine.

SUBCLASS 8. Buttons of all kinds, other than of precious metal or imitations thereof.

SUBCLASS 9. Packing and hose of all kinds.

SUBCLASS 10. Goods not included in other classes or subclasses.

Each subclass of Class 50 shall, for the purposes of the registration of a trade mark, be deemed to be a class.

#### *Assignment.*

A trade mark when registered may be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods in respect of which it has been registered and shall be determinable with that good will.

#### *Infringement.*

No person shall be entitled to institute any proceeding to prevent or recover damages for the infringement of a trade mark,

unless in the case of a registrable trade mark it is registered under this Act or a State Trade Marks Act.

The rights acquired by registration of a trade mark shall be deemed to be infringed by the use, in respect of the goods in respect of which it is registered, of a mark substantially identical with the trade mark or so nearly resembling it as to be likely to deceive.

Provided that any tribunal, in deciding on the question of infringement, shall admit evidence of the usages of the trade in respect to the get-up of those goods and of any trade marks or get-up legitimately used in respect of them by other persons.

#### *Protection of Trade Marks.*

Whoever—

- (a) forges a registered trade mark; or (b) falsely applies a registered trade mark to any goods; or (c) makes any die, block, machine, or instrument for the purpose of forging or of being used for forging a registered trade mark; or (d) disposes of or has in his possession any die, block, machine or instrument for the purpose of forging or of being used for forging a registered trade mark,

shall, unless he proves that he acted without intent to defraud, be guilty of an indictable offense, and liable to imprisonment for any term not exceeding three years.

Whoever sells or exposes for sale, or has in his possession for sale or for any purpose of trade or manufacture, any goods to which any forgery of a registered trade mark is applied or to which any registered trade mark is falsely applied, shall be guilty of an offense against this Act, unless he proves—

- (a) that he acted without intent to defraud; or (b) that the goods were manufactured in or imported into Australia and the trade mark was applied to them before the commencement of this Act and were held by him bona fide and without intent to defraud.

Penalty: One hundred pounds.

Whoever imports into Australia any goods to which any forgery of a registered trade mark is applied or to which a registered trade mark is falsely applied shall, unless he proves that he did not knowingly import the goods in contravention of this Act, be guilty of an offense against this Act.

Penalty: One hundred pounds.

Whoever aids, abets, counsels or procures or is in any way knowingly directly or indirectly concerned in or privy to—

- (a) the commission of any offense against this Act; or (b) the commission of any act outside Australia which if committed in Australia would be an offense against this Act, shall be guilty of an offense against this Act.

Penalty: One hundred pounds.

The following goods are prohibited to be imported, and shall, if imported, be forfeited to the King:

- (a) All goods to which any forgery of a registered trade mark is applied, or to which any registered trade mark is falsely applied; and (b) all goods manufactured at any place outside Australia and having applied to them any trade mark being the registered trade mark of any manufacturer, dealer or trader in Australia unless the trade mark is accompanied by a definite indication of the country in which the goods were made or produced.

All imported goods forfeited under this section may be seized by any officer of Customs.

Marking Goods: "Registered Trade Mark."

#### *Unfair Competition.*

The extent to which the principles of the English law are in force in the British colonies is illustrated by a decision of the first civil court of Melbourne, Australia, in a suit to restrain the passing off of one brand of cordial in the place of another, asked for by customers at the bar. The evidence was offered of several witnesses, who had been employed to find out what the defendant was doing and who testified that when they called for the cordial of the complainant, they were served with another cordial, under a somewhat similar mark.

The judge said that in view of the numerous instances of this character of which testimony was offered, it was clear that the substitution could not have happened by mistake and there was enough to show an intention to pass off. That being so, the plaintiff was entitled to an injunction against the defendant, restraining the passing off of any other liquor in the place of his. Judgment was granted for the plaintiff, and an injunction awarded as indicated, with costs. (O. T., Limited vs. McArthur, October 11, 1911.)

The only notable fact connected with this decision is that it was based upon no provision of statute, but upon those equitable principles of the English law for the discouragement of fraud and deceit, which seem to be the common heritage of English speaking peoples, wherever found.

#### *Important Decisions.*

Application was made for the registration as a trade mark of the word "Woolkadie," in respect of hats. Registration was refused by the Registrar of Trade Marks, and appeal was taken to the Law Officer. The appeal was dismissed on the ground that the word was not an invented word within the meaning of Section 16 (d) of the Trade Marks Act, 1905, the Law Officer holding that the word "Caddie" or "Kadie" is a well known Australian word for a hat.

Application of Bowen & Co. (No. 9375) for registration of "Laxettes" as a Trade Mark in respect to medicine—Refusal by Registrar—Appeal to Law Officer—Appeal dismissed.

The applicants on the 1st of June, 1910, applied for registration of the word "Laxettes" as a Trade Mark for Medicine. The Registrar of Trade Marks on the 27th of September, 1910, refused the application, holding that the word "Laxettes" is not an invented word, within the meaning of Section 16 of the Trade Marks Act 1905, and furthermore has reference to the character of the goods. The Registrar cited the case of the Eastman Photographic Materials Co. Ltd. (16 R. P. C., 476, application for registration of a trade mark, "Solio,") in which at page 48 Lord Shand said:

"There must be invention and not the appearance of invention only. It is not possible to define the extent of invention required, but the words, I think, should be clearly and substantially different from any word in ordinary and common use. The employment of a word in such use, with a diminutive or a short meaningless syllable added to it, or a mere combination of two known words, would not be an invented word."

From the decision of the Registrar, the applicants on Oct. 5, 1910, appealed to the Law Officer, on the ground that the word "Laxettes" was an invented word within the meaning of the Act; that numerous coined words ending "ettes" or "ets" or "etts" have been registered in Australia in Class 3 as invented words, as, for instance, "Formettes," No. 8132; "Ache-ets," No. 5950; "Neverlettes," No. 5196; "Cascarets," No. 5365, etc. The applicants pointed out the fact that similar words had been registered in Great Britain.

On Nov. 4, 1910, the Law Office affirmed the action of the Registrar refusing to register the mark, and dismissed the appeal.

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Application was made for the registration of the word "Deluge" as a Trade Mark for skylights. Registration was refused by the Registrar on the ground that the word carried "characteristic of commendation." On appeal to the Law Officer the word was held descriptive, and the decision of the Registrar was confirmed.—Florant, Application No. 9692.

*"Kangaroo." "Sweet Lips." Decisions.*

Two trade mark decisions by the Registrar of Trade Marks are important as showing the interpretation accorded to Sections 16, 23, and 25 of the Trade Marks Act of 1905. In the first case, application was made in class 13 in respect of lamps

for a trade mark consisting of a picture of a kangaroo holding a lamp, with the word "Kangaroo" printed below the picture. The application was refused on the ground that the trade mark closely resembled eleven other trade marks already registered in the same class. In prosecuting the case, the applicant's agent contended that while the eleven trade marks were registered in the same class, none of them were registered for lamps; and in support of this contention, he declared that Section 25 of the Trade Marks Act of 1905 forbids registration only "in respect of the like goods, or class of goods." He asserted, further, that a trade mark consisting of a kangaroo, bearing a lamp, attached to lamps, would not be likely to deceive those dealing in wire nails or harness or cutlery or edged tools, which were some of the articles covered by the trade marks on the register. In deciding the case, the Registrar said that the question involved here is not so much the likelihood of deceiving the customers, but rather one of the interpretation of the words "like goods or class of goods," as they are written in Section 25. In order to arrive at a correct interpretation of these words, the Registrar reverted to the Imperial Trade Marks Registration Act of 1875, which reads "or classes of goods." The Registrar then pointed out that Section 23 of the Trade Marks Act of 1905 says "a trade mark must be registered in respect of particular goods or classes of goods as prescribed," and he declared that, in his opinion, the words "class of goods" in Section 25 referred to "classes of goods" in Section 23. The application was refused.

The law officer of the Commonwealth stated on appeal that, in his opinion, "class" of goods in Section 25, means one of the prescribed classes referred to in Section 23, but nevertheless he held that the application, having been refused registration, he could not issue an order requiring the Registrar to make the entry, for according to Section 25 such an order can only be made by the Court. The appeal was dismissed.

The second case had to do with an application for the registration of the words "Sweet Lips" in class 42 in respect of confectionery. The application was refused entry on the ground that the words had reference to the character or quality of the goods within the meaning of Section 16 (*e*) of the Trade Marks Act of 1905. The applicants submitted that the words as applied were not descriptive of the character or quality of the goods, but that, on the other hand, "'Sweet Lips' is an arbitrary term which is equally grateful to sweet or sour or dry or moist or any other kind of lips." In deciding the case, the Registrar quoted the words of Mr. Justice Cozens-Hardy in the "Unceda" case: "It does seem to me that these words are, and are intended to be, commendatory and suitable to describe something which a purchaser would find comforting and advantageous, and are used as being descriptive of the quality and character which would be suitable for his wants." The application was refused.



In dealing with the case on appeal, the Law Officer upheld the views of the Registrar and said in addition, that the principal business of the proposed user must also be taken into consideration. He declared that if "Sweet Lips" were applied to galvanized iron, they would have no reference to character or quality, but when applied to confectionery, they become commendatory, and descriptive of the character or quality of the goods suitable for the purchaser's wants. The appeal was dismissed, and the application refused acceptance.

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## AUSTRIA

The empire of Austria comprises 14 provinces, with an area of 115,903 square miles, and had in 1900 a population of 26,150,708.

The great bulk of the trade, both import and export, is with the German Empire, amounting to about two-thirds of the whole.

COMMERCE—Austria is exceedingly rich in minerals of every description, including copper, gold, silver, quicksilver, nickel, lead, tin, zinc, antimony etc., etc. Coal and iron form the principal mining products, being 75 per cent. in value of the whole.

One of Austria's great sources of wealth is wood, and the principal wood-producing provinces are Bukovina and Bohemia.

Rock salt exists in immense beds. Petroleum is found in large quantities in Galicia, the production of crude oil in 1908 being 1,734,235 tons. In the production of wine Austria is second only to France; very little of this wine is exported, the amount imported being almost equal. Flax, hemp, tobacco and hops are cultivated.

The imports embrace every description of goods and merchandise, and consist principally of coffee, fruit, cereals, rice, cattle, eggs, lard, fish, wine, coal, minerals, dyeing materials, raw cotton, cotton yarn and goods, flax, hemp and jute, raw wool and silk, iron, chemicals, woolen yarn and goods, silk goods, paper, leather and machines. Agricultural produce forms the chief Austrian export, and consists of sugar, barley, wheat, malt, seeds, cattle, eggs, beer etc.

Amongst the manufactures a prominent place is taken by the following: Textile goods, fine leather goods, gloves, china and glassware, hardware and fancy goods, paper, hats, ironware, garments and linen, boots and shoes, etc.

The glass industry is very important. This industry has been established in Bohemia for over two centuries, and there are now in Bohemia a large number of glassworks and grinding estab-

lishments. The chief factories for producing plate and mirror glass are situated near Pilsen.

MONEY—Krone=100 Heller=20 cents.

WEIGHTS AND MEASURES—Metric System is in force.

## AUSTRIA

(Including Bosnia, Herzegovina and Lichtenstein.)

### *Law.*

January 6, 1890, and decree of the Ministry of Commerce of December 15th, 1906.

### *Term.*

The registration of marks shall be renewed every ten years, reckoning from the date of registration, by a fresh payment of the tax, otherwise the right to the mark will be considered as expired. (Art. 16.)

### *Renewal.*

Under the Austrian law a trade mark cancelled by reason of expiration of the period of ten years cannot be registered within two years thereafter without the consent of the original registrant. This gives the first registrant a period of two years within which he may renew the registration and protects him against the appropriation of his mark by another during that time. (Decision of the Ministry of Commerce, Jan. 2, 1911, Z 1994/1.)

### *What May be Registered.*

In this law under the term "Marks" are understood the special marks, such as devices, numbers, vignettes and the like, which serve to distinguish in commerce certain products and goods from other similar products and goods. (Art. 1.)

No person shall be prevented, through the registration of any mark which also contains letters or words, from using his name or that of his firm, even if it be an abbreviated form, for distinguishing his goods. (Art. 5.)

Prior user is entitled to registration.

The Minister of Public Works has held that words or sentences applied to an article, not as a distinctive mark of the goods, but to enhance the practical or æsthetic value of the goods, cannot serve as a trade mark. Specifically, he holds that certain sentimental inscriptions, applied by the maker to engagement rings,

are not susceptible of trade mark protection, since they are not of the character to distinguish the goods bearing them from the similar goods of other manufacturers, and would not be understood to be so used. On the other hand they at most give to the article a greater sentimental value, and while identifying the character of the rings, would not serve to identify to the purchaser the maker thereof. (Austrian Patent-Blatt, 1911, p. 65.)

*Trade Marks Excluded from Registration.*

The following marks for goods are excluded from being registered, and therefore no sole right to them can be obtained:

1. Which are exclusively composed of portraits of the Emperor or of members of the imperial house.

2. Which merely consist of the arms of the state or other public arms, numbers, letters or words.

3. Which are in general commercial use for certain sorts of goods.

4. Improper or offensive representations or such as are otherwise contrary to public morality or contain such inscriptions or statements as are not in accordance with the actual commercial state of affairs or the truth, and are liable to deceive the consuming public. (Art. 3.)

Marks in which portraits of the Emperor or of any member of the imperial house, representations of the Imperial Eagle or of public arms form a considerable part, shall only be registered if the right to use these special marks within the meaning of the existing regulations shall have been demonstrated previously. (Art. 4.)

The Austrian Minister of Commerce has rendered decisions wherein it is held that the word "Nonpareil" and the phrase "Non plus ultra" are not registrable in Austria as trade marks, being considered as descriptive of quality, and therefore denied registration according to Section No. 1 of the Trade Mark Law.

The Austrian Minister of Commerce has rendered a decision declaring unregistrable as Trade Marks, words in the English language which convey a meaning, the German expression for which would not be registrable. This decision was given in connection with the word "Safety," the Ministry holding that the meaning of the corresponding German word "Sicherheit," would bar it from registration as expressing a special quality of the goods with which the mark was to be used.

A mark consisting of the letters "B. S. B.," the Imperial Eagle and the words "trade mark registered," is not registrable, because neither of the first two features are admissible under the Austrian trade mark law and the additional words give to the mark no distinctiveness. The mark is, therefore, not calculated to distinguish the goods to which it is applied from others of a like character.

A mark consisting of the letters "G. T." printed in Roman type and surrounded by a frame or border of a single line, are not registrable as a trade mark. Under the provision of the law mere letters are not of themselves distinguishing marks, since they are frequently used upon goods for other purposes than to distinguish the origin, as, for example, to distinguish the quality or price of the goods and also as an abbreviation of the name of the firm, of the manufacturer or dealer. The mere presence of the line border about the letters does not of itself make the mark a distinctive one. (Blatt für Patent-Muster-und Zeichenwesen, April 27, 1910.)

"Radium" was held to be unregistrable on the ground that it was either descriptive or deceptive, for soaps, perfumery, cosmetics; natural and artificial mineral waters of every kind; spring, bath and mineral salts of every kind; borax, medicinal oils, cosmetic creams, cosmetic essences, cosmetic extracts, hair wash, head wash, mouth wash, pomades for beard and hair, cosmetic and toilet preparations, medicinal soaps, beard wax, brilliantine, tooth wash, perfume, powder, toilet soap, tooth paste tooth powder, and glycerine.

"Radium" was held a registrable trade mark for candles.

"Radiogen" was held unregistrable for bath salts, on the ground that it was either descriptive or deceptive.

"Radioplast" for plasters, and "Radiotherm" for bath softening substances were held unregistrable on the same grounds. (Decisions of the Austrian Ministry of Public Works, August 21, 1909, and September 22, 1909.)

The name "Edison" was refused as a mark for push buttons, unless with the consent of the owner of that name, for the reason that its use would be deceptive and would prejudice the interests of the distinguished inventor who bears it.

Under the fourth section of the trade mark law, a registered trade mark may be cancelled upon the petition of one who can prove that, at the time of the registration, the mark had already come to be recognized, in the trade circles concerned, as a mark of identification of his goods. Whether the "trade circles concerned" were confined to Austria, or whether proof of earlier use and consequent recognition of the petitioner's title in other countries is also admissible, has long been an open question. This was settled by a decision holding that proof as to the use of the mark in foreign countries is admissible.

The test of similarity of goods, in cases of use of the same or like marks, is defined to be the likelihood of the goods being regarded as of the like origin, whether because adapted to the same purpose, made in the same factories and sold in the same stores, or to the same class of customers.

Austria refuses to consider as a valid trade mark, one consisting merely of a container or receptacle, as, for example, a

barrel or bottle. With respect to color, a distinction is made in that country, depending on whether the color is that of the background or of the distinctive device forming the trade mark. In the one case the color alone is not recognized as distinctive of the goods. In the other case it is recognized and protected as part of the mark. (Adler, Die Bezeichnungen, etc. 75.)

*"Red Cross." Law of August 23, 1912.*

He who uses the Geneva mark or the words "RED CROSS" or "GENEVA CROSS" without having a right to the use thereof, or who uses this mark or designation in a modified form, in such manner, however, that the impression of the Geneva mark is implied thereby, shall be sentenced by the authorities of the State to the payment of a fine not exceeding K. 500, or to imprisonment for a term not exceeding one month. Articles illegally marked shall be seized regardless of the failure to pronounce sentence. The authorities of State shall decree, at the expense of the owner, the removal of the illegal marks and order the confiscation of the articles in case that the removal of the marks is impossible. Confiscated articles shall be placed at the disposal of the Austrian society of the Red Cross.

Concessions heretofore granted for the use of the mark or the name "RED CROSS," as well as the right to trade marks and designs, the use of which is contrary to the provisions of this law, remain valid until September 27, 1913. Owners of registered firms in which the words "RED CROSS" or "GENEVA CROSS" are contained, shall make corresponding changes in their firm on or before this term, otherwise they shall be compelled to make these changes by the commercial tribunal under the provision of Art. 26 of the commercial law and of Sec. 12 of the law on import.

This law comes into force on the day of its publication, Sept. 7, 1912.

*Mode of Registration.*

By virtue of the provisions of a new treaty of commerce entered into between Austria and Hungary, in October, 1907, new regulations regarding the registration of trade marks in these countries have gone into effect. Hitherto it has been necessary for foreign owners of trade marks to register in both countries at the same time, registration in a single country of a foreign mark not having been permitted. Hereafter, however, foreign subjects may register their trade marks either in Austria or in Hungary. This is the principal feature of novelty in the regulations. It may be added that the protection of foreign trade marks registered in Hungary extends to Bosnia and Herzegovina.

Four copies of the marks for which any person shall desire to obtain the exclusive right, must be filed in the Chamber of

Commerce and Industry in whose district the business in question is situated. One copy shall be attached to the Register of Marks which is to be kept by the Chamber of Commerce and Industry; one copy shall be returned to the applicant inscribed with the acknowledgment prescribed in the succeeding paragraphs. Two copies shall be laid before the Minister of Commerce. The applicant must, at the same time, state for what classes of goods his mark is intended. Further, a block of each mark must be filed with the Chamber of Commerce and Industry, which will be returned to the applicant after having been used. In the case of marks for materials such as metal, earthenware, glass and the like, at least three samples of the materials with the marks impressed therein shall be filed. (Art. 13).

#### *Fee for Registering Trade Marks.*

For registering each mark a tax of 10 Kr. shall be paid, which shall go into the treasury of the Chamber of Commerce and Industry, where the registration was effected. (Art. 15.)

#### *Assignments.*

In order to transfer the right to a mark, within the meaning of Art. 9, assignee must produce proof of his having acquired the business to which it relates.

The transfer is subject to the same tax as the first registration (Art. 15) and shall be entered both on the certificate granted to the applicant (Art. 13, paragraph 2), as well as in the register of the Chamber of Commerce (Art. 14), and in the Central Register of Marks (Art. 17), and published (Art. 17, last paragraph). (Art. 20).

The Austrian law requires that an assignment of a trade mark, which must be accompanied by change of ownership of the business, shall be entered in the register within three months, or the owner's rights in the mark shall be lost. In a late decision it was held that the transfer of a business from a single individual to a corporation was such a change of ownership as requires to be entered in the trade mark register, in connection with the trade mark used in the business, even though there was no change whatever in the firm name. It makes no difference that the concern is a German one, and that, therefore, the status of the corporation is determined by the German commercial code. So far as concerns the requirement that the assignment be registered, the Austrian law alone is to be consulted.

The transfer of a trade mark need not necessarily be accompanied by a transfer of the entire business, if that branch of the business in connection with which it is used be a separate one, and be capable of transfer apart from the rest of the business. (Dr. Paul Abel in *Markenschutz und Wettbewerb*, 1910, p. 273.)

*Requirements.*

One certified copy of the United States Trade Mark showing a facsimile of the protected mark and enumerating the articles or goods which the mark is applied to.

One power of attorney, signed by the applicant or applicants in full. In case the mark has to be registered in Austria-Hungary in another name than that given in the United States certificate, a certified assignment has to be attached and legalized by an Austro-Hungarian consul.

Four facsimiles of the mark and two electrotypes.

In case the mark will be shown on the manufactured goods in raised or stamped-in characters, four specimens, blocks or discs, presenting the characters (but without the words "Trade Mark" or "Schutzmarke") are to be produced and ought to be of the material of which the goods are made, as metal, porcelain, glass, etc. Precious metals may be substituted by brass, nickel, steel or the like. These specimens ought to be perforated at the edge for attaching tacks and should show a free margin of about one inch around the characters.

*List of Goods.*

(a) Applicants in the country.

In all cases where an application is filed for the protection of a trade mark for a series of goods, especially such as are classed in more than one of the six groups of goods enumerated below, the applicant must furnish a list of goods, in six copies, signed by him or his representative, wherein the goods shall be arranged according to the group of goods indicated below and alphabetically recited within each group.

The six groups of goods are:

1. Metals, metalware, tools, instruments and machines.
2. Stone, earthen and glass ware.
3. Wooden, straw, paper, bone, rubber and leather goods.
4. Yarns, tissues, wearing apparel and articles of dress.
5. Articles of food, beverages and agricultural products; and
6. Chemical products.

(b) Foreigners.

Above all, a transcript of the list of goods, like that upon which the foreign trade mark registration is based, must be furnished in one copy. In this transcribed list the goods must be numbered in successive order. Further, there must be furnished six lists of goods, signed by the applicant or his representative, in which the statements of goods of the foreign list are arranged according to the six preceding groups and are named, within each group, alphabetically, with the addition of the ordinary number of the foreign list.

*Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No law is in force to prevent the sale or importation of goods bearing a false indication of United States or other origin except in the case of hops. Existing laws merely protect trade and manufacture marks registered.

Marking Goods: (Optional) "Schutzmarke,"

*Extinction of Trade Marks.*

Marks become extinct—

(a) On application of the proprietor of the mark;  
 (b) If the registration shall not have been renewed when due under the regulations of Art. 16.

(c) If the transfer shall not have been duly carried out. (Arts. 9 and 20.)

(d) If the Minister of Commerce shall decide that under Articles 3 and 4, the mark should not have been registered.

(e) In consequence of the decision of the Minister of Commerce obtained in any action about the existence of a right to a mark. (Art. 30.) (Art. 21.)

The extinction of a mark shall be entered on the certificates (Art. 14) as well as in the register of the Chamber of Commerce and Industry (Art. 14) and on the Central Trade Mark register, and it shall be published. (Art. 17.) (Art. 22.)

*Infringement.*

Any person who shall knowingly put in circulation or keep for sale goods which are unauthorizedly marked with a mark, the exclusive right of user of which belongs to another, and further any person who for this purpose knowingly counterfeits a mark, commits an offense, and shall be liable to be punished by a fine of 500 to 2,000 florins, or with from three months to a year's imprisonment, to which a money penalty of 2,000 florins can be added.

The simultaneous employment of the more stringent regulations of the general penal code, especially those relating to the crime of fraud (Art. 197, etc.) is not thereby excluded. (Art. 23.)

The regulation of Article 23 applies also to those who knowingly put in circulation, or keep for sale, goods which are unauthorizedly marked with the name, firm, arms, or trade name of the place of business or the manufacturer or merchant; further, to those who knowingly fabricate such marks. (Art. 24.)

The liability for punishment for the acts enumerated in Articles 23 and 24 is not avoided if the mark, name, firm, arms, business style of the establishment be reproduced with so slight



an alteration or in such an indistinct manner that buyers can only detect the difference of the goods in question from the ordinary ones by paying special attention thereto. (Art. 25.)

The ordinary courts shall be invoked for taking proceedings and the passing of sentence for the offenses detailed in Articles 23 and 24.

An action shall be commenced on the demand of the injured party. (Art. 26.)

On the application of the injured party an order can be made that the tools and appliances exclusively or specially used for the counterfeiting or unauthorized reproduction shall be rendered incapable of being used for this purpose, that the stocks of counterfeited marks and unauthorizedly manufactured labels shall be destroyed, and the unauthorized marks and labels removed from goods found in possession of the condemned persons, or from the packages of the same if that should involve the destruction of the goods.

The injured party shall be further authorized to publicly make known the judgment against the infringer at the expense of the latter. The mode of publication as well as the duration of the same is to be fixed in the decision after consideration of the proposals of the injured party.

On the application of the injured party, instead of the compensation due to him on his private rights, in addition to the penalty, a monetary fine to the amount of 5,000 florins, to be handed to the injured party, can be decreed by the Court of Justice, the amount to be fixed after free and careful consideration of all the circumstances.

Persons sentenced to pay a monetary fine can be arrested as separate debtors.

The rules of this paragraph shall apply even if the punishment takes place under the stricter regulations of the general penal code. (Art. 27.)

The injured party is entitled, even before the punitive judgment is decreed, to demand the confiscation or seizure of the articles enumerated in Article 27, paragraph 1, also to make an application that the necessary measures shall be taken for the purpose of preventing a repetition of the punishable offense.

The court shall adjudicate immediately on this application, and it shall also be optional for it only to authorize the desired confiscation or arrest, as well as the other measures desired, against security to be given by the injured party. (Art. 28.)

Should the injured party demand, for any of the offenses described in Articles 23 and 24, the grant of compensation through a civil court, the latter shall decide both as to the right to compensation, as well as the amount of the same, after due consideration of all the circumstances. (Art. 29.)

The Minister of Commerce shall decide the point whether the exclusive right of user of a mark belongs to a person, also as to the priority and transfer of this right, and also whether a registered mark shall be used by another party for a different class of goods. (Art. 7.)

Should it appear, in the course of legal proceedings in any of the cases enumerated in Article 23 that a decision of a question is pending, upon which, under the first paragraph of this Article 30, the Minister of Commerce has to adjudicate, the Criminal Court shall, after submitting the necessary documents to the Minister in question, request him to decide this question first and shall await the notice of same. (Art. 30.)

Contraventions of the regulations set forth in Article 6 shall be punished by the usual Courts in accordance with regulations of the industrial law, in which the forfeiture of the goods in question is always decreed. (Art. 31.)

#### *Marks Relating to Business Outside Austria.*

As regards the protection of marks, as well as of names, firms, arms, or trade names of houses belonging to foreign business this takes place in accordance with the treaties or conventions concluded with the states in question.

The regulations of the customs and commercial union shall decide under what conditions marks registered in the territory of the Royal Hungarian crown, and also names, firms, coats of arms, or trade designations of establishments of manufacturers or merchants of that country, shall share in the protection secured by this law. (Art. 32.)

#### *Descriptive Terms in Austria.*

The English words "gentleman" and "lady" have been held to be unregistrable in Austria because of their descriptive meaning. Application was made to register the word "gentleman" as a trade mark for shirts. The administrative court, in affirming the decision of the minister of public works in refusing to register the mark, said that, while the etymological meaning of the word is not conclusive as deciding the registrability of the mark, however, in the present case, the word "gentleman" has long been used in the current speech to mean a man of high social standing who is especially particular in matters of dress. Although the word "gentleman" could not of course be considered as describing the goods, it would nevertheless mean that they were of such a quality as to make them appropriate for gentlemen's wear, and was not, therefore, a fanciful term within the meaning of the law.

The word "lady" was refused registration for similar reasons as a trade mark for toilet creams, perfumeries, toilet soaps, and powder. (Austrian Patent-Blatt, December 1, 1911, p. 1130.)

The word "Hockey" was refused registration as a trade mark for skates, on the ground that it would be regarded by the purchasing public as nothing less than an indication that the skates so marked were to be used in playing hockey. The allegation of the applicant that the skates were not especially made for use in hockey was not relevant to the case, since the idea the word would convey to the public, and not the manufacturer's conception of the word, was to be considered as conclusive.

The sentence "Shave Yourself" was also refused registration as a trade mark for shaving and toilet requisites, face powder and soap. The Minister of Public Works based his decision upon the fact that the sentence was one commonly used in advertising razors, and therefore, plainly indicated the nature of the goods, without, however, indicating their origin. (Austrian Patent-Blatt, 1912, pp. 10, 11.)

The termination "ol," used so frequently in names of proprietary medicines and pharmaceutical products has been declared unregistrable in Austria by a recent decision of the Minister of Public Works. The case in question concerned the term "Coniferol" as a trade mark for products made from pine and balsam. The cancellation of the mark was decreed on the ground that the German termination "ol" (English "oil") was so commonly used in the trade to designate the oils and oil products of various kinds that it was clearly descriptive of the goods. When combined with the word "Conifer," it would mean simply that the oil in question was made from pine trees. The fact that several other similar marks ending with the same syllable "ol" had been registered, was not deemed relevant to the case. (Zeitschrift für Industrierecht, 1911, p. 144.)

The word "Cavalier" has been refused registration as a trade mark for watches and parts thereof in a suit for cancellation brought by a competing firm. The decision was based upon the almost unanimous testimony of a large number of expert watch-makers to the effect that the word "Cavalier" was used to designate a kind of thin watch made for gentlemen's use, and had acquired a descriptive meaning as applied to these goods. (Austrian Patent-Blatt, 1912, p. 40.)

#### *Decisions.*

In a circular addressed to the states that participate in the international arrangement for the registration of trade marks, the international bureau calls attention to a situation arising out of the domestic legislation of Austria affecting trade marks. By the terms of the Austrian law, when application is made for the registration of a mark that has been already registered in the name of another person, the Minister of Public Works notifies

both the parties concerned, after which they may severally act as they deem advisable. Thus, the second applicant may modify or withdraw his application, or come to an agreement with the registrant, or seek the cancellation of the prior registration.

In certain cases, owners of Austrian registrations of prior dates have demanded cancellation of the international marks that were in conflict with their own. The Minister of Public Works then gives to the registrant a time within which he may defend against the cancellation. If the latter desires to defend, he should communicate his reasons to the State Minister. If, on the contrary, he considers that the complainant is within his right, or if he does not wish to maintain his protection in Austria, and fails to reply, the Minister decrees the cancellation of his mark by default, condemning him to the payment of expenses. The payment of expenses may, however, be avoided by voluntarily giving up the right to the mark in Austria. (*La Propriété Industrielle*, 1912, p. 39.)

Trade mark rights can not be had in the mere representation of the goods themselves which a mark is intended to distinguish. A mark for pianos, consisting merely of the representation of a piano, is not one that will distinguish the goods of the owner of the mark from similar goods of other make. Such a mark is only indicative of the nature and form of the article, and not of its origin, and it is one, therefore, that every manufacturer of an article of similar nature and form should be at liberty to use. A cancellation of the mark was decreed.

The word "Automobil" was likewise decreed to be cancelled with respect to tape measures, machines, pocket oilers, tool sets, rubber goods, rubber bags, leather pocket books, leather ware and chemical products, for the reason that, as applied to these goods, it indicated that they were accessories of automobiles or were particularly adapted to use in connection with automobiles. As applied to other articles, however, for which the mark was registered, it was held to be a purely fanciful name, the goods in question having no relation to automobiles. (*Patent-Blatt*, September 1909.)

The prosecution was instituted against one Fred Worlicek, of Carlsbad, for the use of the term "Listerine" upon a product not that of the complainant. The defendant maintained that the word had been for many years in pharmacy regarded as descriptive and was public property in the trade. The Court, however, overruled the contention and sentenced the defendant to the payment of a fine of three hundred crowns and costs, besides ordering the destruction of the labels and the publication of the verdict at the expense of the defendant in two designated newspapers.

On an application for the cancellation of certain trade marks registered in Austria and consisting of the words "The Two

Cross Guns Brand Enamel Ware," and other expressions similar in effect, it has been held that the earlier registration of a trade mark consisting essentially of the representation of two guns crossed, does not afford ground for such cancellation. In the opinion of the Austrian Court of Appeals there can be no conflict between trade marks, the one consisting of words only and the other consisting of a mere design. It was maintained in the complaint that the marks conflicted, inasmuch as the word marks conveyed the same idea as did the design previously registered, and that the ordinary purchaser would have difficulty in distinguishing the wares and would be liable to confusion by reason of this similarity of the marks, but this view did not commend itself to the Austrian court. (Austrian Patent-Blatt, 1908, p. 189.)

The Minister of Public Works of Austria has lately rendered a decision cancelling the registration of a trade mark containing the words "red cross" because in violation of a provision of the Austrian law. The mark registered, for stoves and ranges, was in the form of a polished metal plate, containing in outline the representation of a Maltese Cross, and the words "Red Cross Stoves and Ranges." In spite of the fact that the mark, as registered and used, did not involve the use of the red color in connection with the representation of a cross, the Ministry held that it was a violation of the law.

The contention that the purchaser of the stoves would not presume that there was any connection between the articles and the Red Cross Society, the Ministry held it was not called upon to determine, in view of the prohibitive sections of the law referred to, it being immaterial what ideas the purchaser of the goods associated with it. The fact that the words were used in the English language, and not in any languages current in Austria, was held not to be a circumstance in support of the registration. The argument that the words "red cross" in the English language did not commonly designate the insignia of the Society of the Geneva Cross, was said to be disproven by common usage of the term in the United States.

As to the claim that the mark was entitled to be registered under the treaty between Austria-Hungary and the United States, it having been first registered in the United States, the Ministry said that this treaty secures to American citizens no more protection in Austria than is accorded to citizens of that country. That is to say, it secures reciprocity, by virtue of which each of the contracting parties is bound to treat the citizens of the other country in a manner precisely similar to its own citizens in so far as trade mark protection is concerned. This, however, does not secure to citizens of the United States in Austria greater rights than citizens of Austria are enabled to claim in their own country.

The right to a mark may be lost by the use of statements contained therein, indicating falsely the origin of the goods. Where a mark contains the word "Qualite Francaise" in connection with other words, all in the French language, they will be understood by the consumer to indicate that the goods are of French origin, there being no indication of the actual place of manufacture of the goods. Such false statements invalidate the mark. (*Zeitschrift für Industrierecht*, 1906, pp. 224, 236.)

The word "Tuberkuleum" as a trade mark for soap and soap powder is not registrable. Registration is refused upon the ground that it will be presumed that the goods protected by the word are of value in preventing the disease known as "Tuberculosis" or that the use of such soap is recommended to persons who come in contact with the disease. Held, that the nullification of the trade mark should be decreed. (*Austrian Patent-Blatt*, May 15, 1907.)

#### *Prior Use.*

Unlike that of some European states, notably Germany, in which the right of the registrant of a trade mark is conclusive, irrespective of prior use by another, the law of Austria provides for the cancellation of a mark registered in violation of the rights of one who has previously used it in Austria. In a late case the right of a Swiss house to demand cancellation of its mark registered in Austria by another came in question. The mark had been registered in Switzerland by its lawful owner, but not in Austria. It had, however, been used in the latter country for some years prior to its wrongful registration by the defendant. The defendant was the former agent of the plaintiff in Galicia, and had sold there the watches and watch cases of the plaintiff's predecessor, bearing its trade mark "Omega." The plaintiff, a corporation, was organized to take over the business of a co-partnership of the same name on May 14, 1903, and on May 19, 1903, the trade mark, registered in Switzerland in the name of the co-partnership, was transferred to the corporation.

The agent, by way of defense, relied upon the contention that in order to avail themselves of the remedies provided by the Austrian law, the plaintiffs must have registered their mark in Austria, claiming that under the convention between Switzerland and Austria, providing for the reciprocal protection of trade marks belonging to the subjects of the several countries, no protection was accorded in Austria to the subjects of Switzerland unless they should have registered their marks in the former country. The Minister of Commerce, however, held that as the law of Austria afforded protection in a similar case to a native of Austria, under Section 1 of the convention, which required that citizens of Switzerland should enjoy in Austria the same protection as its subjects, the government of Austria was bound to extend

to Swiss subjects the benefit of the protection which their law would afford to their own citizens, and to sustain an action brought in the proper case for the cancellation of the registration wrongfully made.

In the case in question it was held that the plaintiffs had made out their right to relief, because they had shown by satisfactory evidence that the mark at the time it was registered by the defendant was regarded in Austria among the trade and those engaged in the handling of that class of goods as indicative of the products of the plaintiffs. The defendant claimed that the mark was known as his own and understood to indicate his goods. It is interesting to note that, for the purpose of determining this disputed question of fact, the Minister of Commerce took the opinion of Chambers of Commerce in various cities of Austria as to the goods indicated by the mark at the time of its registration by the defendant, and decided on the evidence submitted that the mark was known as the designation of the plaintiff's goods.

The defendant further claimed, that inasmuch as the mark had never been used by the plaintiff in Austria at the time of bringing the action, but only by its predecessors, and inasmuch as there was nothing in the Austrian law to secure to the assignee of the trade mark a right of action in this case, the plaintiff was without standing in the court. The Minister, however, said that the law recognized the right of the assignee in general and that if it did not expressly provide for a case of this sort, it was because the right of the assignee to sustain the action was so obvious that the legislature considered it as necessarily following from the relation between the parties and that the omission was not to be construed as negating the right to such an action.

#### *Right to Register.*

A trade mark to be registered in Austria must be applied for in connection with goods related to the business of the applicant. Application was made to register certain marks for substitutes for cocoa and coffee. The business of the applicant was, however, the manufacture and sale of margarine. The Minister of Public Works held that the production of a substitute for cocoa and coffee had no relation to a business of the character mentioned.

Since the mark is intended to distinguish the goods of the applicant from the goods of others, and since the right to a mark can have no existence independent of a business the products of which are to be designated by the mark, the registration of a mark for goods which are really not manufactured by the applicant, and, from the nature of his business, cannot be manufactured by him, is not permitted. If the applicant affirms her statement made to the chamber of commerce in Reichenberg, that

she does not plan to take up in any way the manufacture of a substitute for cocoa and coffee, and wants the concession only in case she should later engage in the manufacture and sale of the goods, then it must be noted that trade marks for an undertaking not yet in progress can be secured only if at the time of application some real preparations for the establishment of the business is still in prospect. Moreover, the words, "Moorish Cocoa," which it is desired to register, are designed to create in the minds of the consumers the belief that it makes genuine cocoa, and not merely a substitute for it, and thus confusion would arise in the minds of the general public. (*Zeitschrift für Industrierecht*, 1912, p. 154.)

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## BAHAMA ISLANDS

The Bahama Islands form an archipelago of coral limestone, extending in an irregular line from Southeast Florida to Hayti and Santo Domingo. There are about twenty inhabited islands, and an immense number of islets and rocks; the total area is 4,466 square miles. The principal island is New Providence, which contains the capital, Nassau. The total area of the nineteen principal islands is 4,424 square miles; Andros is the largest, and contains 1,600 square miles.

The population of the islands in 1911 (Dec. 31st) was estimated at 70,000.

**EXPORTS**—The principal articles of export are sponges, pineapples, also oranges, grape-fruit, shaddock, bananas, cocoanuts, dye-wood, Bahama hemp (sisal), turtle shell, conchshells and small shells. The following varieties of wood are also exported, viz, braziletto, cedar, ebony, *lignum vitae*, logwood, madeira, mahogany, sabica, satin wood and bark (*cascarilla*).

**SPONGE INDUSTRY**—Sponge fishing is carried on to a considerable extent. It is estimated that there is engaged in this industry a fleet of about 500 vessels, with aggregate tonnage of 5,185, with boats attached numbering 2,463; the number of persons employed is about 5,000. Value of exports, for the year 1909, was £87,657.

The ports of entry in the Bahamas are as follows:—Nassau, Green Turtle Cay and Hope Town, Abaco, Bimini, Governor's Harbour, Eleuthera, Harbour Island, Exuma, Rum Cay, Long Island, Long Cay, Inagua, Ragged Island, San Salvador and Watlings Island.

The whole trade from North America and Europe to the Gulf of Mexico passes by the north of these islands. Steamers bound south stem the rapid current of the Florida channel. Sailing vessels pass between Abaco and Eleuthera, through the Providence



channels, within 40 miles of Nassau, into the Gulf of Florida. All the trade from North America to the eastern parts of Cuba, to Jamaica, the Gulf of Honduras, and the northern coasts of South America, passes southward to windward of the group, and close to the shore of Inagua. The return trade, and all the European trade from the same countries, passes north, either through the Crooked Island passage or the Mayaguana or Caicos channels. The Bahamas therefore lie in the tracks of two great streams of trade.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Law.*

Date of law, May 29, 1906.

*Duration of Registration.*

The registration of a trade mark shall be for fourteen years, but may be renewed from time to time. (Art. 27.)

*What May Be Registered.*

A registrable trade mark must contain or consist of at least one of the following essential particulars:

1. The name of a company, individual, or firm represented in a special or particular manner;
2. The signature of the applicant for registration or some predecessor in his business;
3. An invented word or invented words;
4. A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;
5. Any other distinctive mark, but a name, signature or word or words, other than such as fall within the description in the above paragraphs (1), (2), (3) and (4) shall not, except by order of the court, be deemed a distinctive mark.

*Requirements.*

Power of attorney, six copies of the mark and electrotype. (Form for application may be obtained from B. Singer's offices.)

*Mode of Application.*

If the application for registration of a trade mark be made by a firm or partnership it may be signed in the name or for and on behalf of the firm or partnership by any one or more members thereof.

If the application be made by a body corporate it may be signed by a director or by the secretary or other principal officer of such body corporate.

Any application may be signed by an agent.

On or after the receipt of the application the Registrar shall furnish the applicant with an acknowledgment thereof.

Every application for registration of a trade mark shall contain a representation of the mark affixed to it in the square which "Form No. 2" contains for that purpose.

Where the representation in the preceding Rule mentioned exceeds such square in size the representation shall be mounted on linen, tracing cloth or other material that the Registrar may consider suitable. Part of the mounting shall be affixed in the space aforesaid and the rest may be folded over.

There shall be sent with every application for registration of a trade mark four additional representations of such mark on "Form No. 3" exactly corresponding to that affixed to the application (Form No. 2) and noted with all such particulars as may from time to time be required by the Registrar.

The particulars above mentioned shall, if required, be signed by the applicant or his agent.

Applications for the registration of the same mark in different classes shall be treated as separate and distinct applications, and in all cases in which a trade mark is registered under the same official number for goods in more than one class, the registration shall henceforth for the purpose of fees and otherwise be deemed to have been made on separate and distinct applications in respect of the goods included in each class.

The Registrar may also, in exceptional cases, deposit in the office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

Upon receipt of an application for registration the Registrar shall cause a search to be made amongst the registered marks and pending applications for the purpose of ascertaining whether there are on record any marks for the same goods or description of goods identical with the mark applied for or so nearly resembling it as to be calculated to deceive.

If after such search and consideration of the application any objections appear, a statement of those objections shall be sent to the applicant in writing, and unless within one month the applicant applies for a hearing, he shall be deemed to have withdrawn his application.

If the Registrar accepts an application subject to any conditions, amendments, or modifications, and the applicant objects to such conditions, amendments, or modifications, he shall within one month from the date of the communication notifying such acceptance apply for a hearing, and if he does not do so he shall be deemed to have withdrawn his application. If the applicant does not object to such conditions, amendments, or modifications, he shall forthwith notify the Registrar in writing.

The decision of the Registrar at such hearing as aforesaid shall be communicated to the applicant in writing, and if he objects to such decision he may within one month apply upon "Form No. 4" requiring the Registrar to state in writing the grounds of his decision and the materials used by him in arriving at the same.

Upon receipt of such form the Registrar shall send to the applicant such statement as aforesaid in writing, and the date when such statement is sent shall be deemed to be the date of the Registrar's decision for the purpose of appeal.

The Registrar may call on an applicant to insert in his application such disclaimer as the Registrar may think fit, in order that the public generally may understand what the applicant's rights, if his mark is registered, will be.

#### *Opposition.*

Any person may within one month from the date of any advertisement in the Journal of an application for registration of a trade mark give notice in writing at office of opposition to the registration.

Within one month from the receipt of such duplicate the applicant shall send to the Registrar a counterstatement (Form No. 8) in writing setting out the grounds on which he relies as supporting his application. The applicant shall also set out what facts, if any, alleged in the Notice of Opposition he admits. Such counterstatement shall be accompanied by a duplicate in writing.

Where a party giving notice of opposition neither resides nor carries on business in the colony, the Registrar may call upon him to give a security in such form as the Registrar may deem sufficient for the costs of the proceedings before the Registrar, for such amount as the Registrar may see fit, and at any stage in such opposition may require further security to be given at any time before giving his decision in the case.

#### *Assignments.*

A trade mark when registered shall be assigned and transmitted only in connection with the good-will of the business concerned in the goods for which it has been registered and shall be determinable with that good-will. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the good-will of the business therein in such goods. (Art. 21.)

#### *Series of Trade Marks.*

When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling

each other in the material particulars thereof, yet differ in respect of—

(a) Statements of the goods for which they are respectively used or proposed to be used; or

(b) Statements of number, price, quality, or names of places; or

(c) Other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) Color,

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks. (Art. 25.)

Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that, where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

#### *Infringement.*

No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark. (Art. 40.)

In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons. (Art. 41.)

#### *Penalty on Falsely Representing a Trade Mark.*

Any person who represents a trade mark as registered which is not so shall be liable for every offense on summary conviction to a fine not exceeding five pounds.

Any person shall be deemed for the purposes of this enactment, to represent that a trade mark is registered if he uses in connection with the trade mark the word "registered" or any words expressing or implying that registration has been obtained for the trade mark.

#### *Selling Goods.*

Every person who sells, or exposes for sale, or has in his possession for sale, or any purpose of trade or manufacture, any

goods or things to which any forged trade mark is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall be guilty of an offense against this Act, unless he proves—

(a) That having taken all reasonable precautions against committing an offense against this Act, he had at the time of the commission of the alleged offense no reason to suspect the genuineness of the trade mark; and

(b) That on demand by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) That otherwise he acted innocently.

*Forging or Falsely Applying Trade Marks.*

Every person who

(a) Forges any trade mark; or

(b) Falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, shall, unless he proves that he acted without intent to defraud, be guilty of an offense against this Act.

A person shall be deemed to forge a trade mark who either

(a) Without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or

(b) Falsifies any genuine trade mark whether by alteration, addition, effacement or otherwise.

Any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark;

Provided that in any prosecution for forging a trade mark the burden of proving assent of the proprietor shall lie on the defendant.

A person shall be deemed to apply a trade mark or mark to goods who

(a) Applies it to the goods themselves; or

(b) Applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or

(c) Places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark has been applied; or

(d) Uses a trade mark or mark in any manner calculated to lead to the belief that the goods in connection with which it is used are designated by that trade mark or mark.

*Punishment of Offense.*

Any person guilty of an offense against this Act shall be liable on summary conviction to a penalty not exceeding £50 and to the forfeiture of all goods in respect of which the offense is committed.

*Classification.*

Same as Great Britain.

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## BARBADOS

This is a colony of the British Empire, and is the most eastern of the Antilles or Caribbean islands. The extreme length is about 21 miles, and the extreme breadth about 14 miles, it having an area of about 166 square miles. The estimated population in 1911 (Dec. 31st) was 240,000.

The entire industry of the island may be said to be the growing of sugar cane, and its principal exports are sugar and molasses. Within the past few years a species of glance pitch, locally called "manjak," has been mined and largely exported to Europe and the United States. Cotton is now being grown, and the export during 1911 was valued at £40,946.

The total imports during 1911 were valued at £1,119,344, and the total exports were valued at £888,086.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Laws.*

Merchandise Marks Act 1889. Merchandise Marks Act amended March 20, 1896.

*Duration.*

Fourteen years, renewable.

*What May Be Registered.*

A trade mark must consist of or contain at least one of the following essential particulars: (a) a name of an individual or firm printed, impressed, woven or blown in glass; or (b) a written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or (c) a distinctive device, mark, brand, heading, label, ticket or fancy word or words not in common use.

There may be added to any one or more of these particulars any letters, words or figures or combination of letters, words or figures or any of them.

*Restrictions on Registration.*

1. Where a court of law or equity has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the Registrar shall not register in respect of the same goods or a description of goods a trade mark identical with the one already on the register with respect to such goods or descriptions of goods.

2. The Registrar shall not register with respect to the same goods or description of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

3. It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would by reason of their being calculated to deceive or otherwise be deemed disentitled to protection in a court of justice, or any scandalous design. (Art. 12.)

*Application for Registration.*

Application for registration must be made to the Registrar who shall advertise in the Official Gazette and one of the newspapers of this island a notice in the form set forth in the schedule of this Act, and such notice shall be advertised in three consecutive numbers of the Official Gazette and such newspaper, but the Registrar shall not insert such advertisement till the person making the application shall deposit with the Registrar the sums to be charged by the Official Gazette and such newspaper for inserting such advertisement.

*Opposition to Registration.*

1. If no notice of opposition to the registration of such trade mark shall be left with the Registrar at his office within one month of the first advertisement of the application in the Official Gazette then the Registrar shall register such trade mark in the name of the person by or on behalf of whom such application is made.

2. Any person may within one month of the first advertisement of the application give notice in duplicate at the office of the Registrar, of opposition to the registration of the trade mark and the Registrar shall send one copy of such notice to the applicant.

3. Within fourteen days after receipt of such notice the applicant may send to the Registrar at his office a counterstatement in duplicate of the grounds on which he relies for his application, and if he does not do so shall be deemed to have abandoned his application.

4. If the applicant send such counterstatement the Registrar shall furnish a copy thereof to the person who gave notice of

opposition and shall require him to give security in such manner and to such amount as the Registrar may require for such costs as may be awarded in respect of such opposition, and if such security is not given within fourteen days after such requirement was made the opposition shall be deemed to be withdrawn and the Registrar shall register such trade mark in the name of the person by or on behalf of whom such application is made.

5. If the person who gave notice of opposition duly gives such security as aforesaid the Registrar shall inform the applicant thereof in writing and thereupon the case shall be deemed to stand over till the same has been decided by some court of law or equity.

#### *Assignment and Registration of Assignment.*

A trade mark when registered shall be assigned and transmitted only in connection with the good will of the business concerned in the particular goods or classes of goods for which it has been registered and shall be determinable with that good will.

The assignment or transmission of every registered trade mark shall be entered on the register by the person claiming under transmission or assignment and such person shall not be entitled to the protection afforded by this Act till such entry shall be made.

#### *Classification.*

Is the same as in Great Britain.

A trade mark must be registered for particular goods or classes of goods.

#### *Requirements.*

Power of attorney; six copies of the mark and electrotype. (Form for application may be obtained from B. Singer's offices.)

## BELGIUM

The kingdom of Belgium has an area of 11,373 English square miles (or less than one-fifth the extent of England) and a population in December, 1911, of 7,610,591. It consists of nine provinces, viz.: Anvers, Brabant, Flandre Occidentale, Flandre Orientale, Hainaut, Liege, Limbourg, Luxembourg, Namur.

COMMERCE—Belgium is to a large extent an agricultural country, and produces in addition to the cereal crops, sugar, beets and cattle.

The manufactures may be said to embrace every commodity that the country requires, but among these should be especially mentioned lace, edge tools, iron manufactures, locomotive and



other steam engines, arms, bronzes, porcelain, glass, cement, etc.

This country is enormously rich in minerals. Its coal regions extend over an immense field and give employment to over 140,000 miners. The quantity exported during 1911 amounted to 5,076,942 tons, principally to France (3,908,712 tons). There are also valuable zinc mines.

The total imports during 1911 were valued at £148,172,640, and the exports were valued at £112,388,920. The figures for the first six months of 1911 are:—Imports £78,072,320; exports, £54,973,080.

**MONEY**—The monetary unit of Belgium is the franc=9 1/2d. =20 cents.

**WEIGHTS AND MEASURES**—The metric system.

#### *Laws.*

Law of April 1, 1897. Decree of July 7, 1897.

#### *Term.*

Perpetual.

#### *What May Be Registered.*

All signs serving to distinguish the products of an industry or objects of commerce are considered as trade marks.

#### *Who May Register.*

Foreigners who have industrial or commercial establishments in Belgium may register marks for use on the products of such establishments. It is the same with foreigners or Belgians who are engaged in industry or commerce abroad, if in the country where their establishments are located reciprocity for Belgian marks has been established by International Convention. (Art. 6.) The first user of the mark is entitled to registration.

#### *Mode of Application.*

No one shall lay claim to any right to use of a mark if he has not filed a specimen in triplicate and an electrotype of the mark with the clerk of the Tribunal of Commerce in the district in which his establishment is located. (Art. 2.)

The applicant must furnish a statement of his name, address and occupation, and that of his attorney, and the kind of industry or trade in which the mark is used. The mark is registered without preliminary examination.

The fee for registration is 10 francs. (Art. 7.)

#### *Penal Provisions.*

Will be punished by a fine of from 26 to 2,000 francs and imprisonment from 8 days to 6 months, or one of these penalties only:

(a) Those who have counterfeited a mark or made use of a counterfeited mark;

(b) Those who have fraudulently affixed on their products or objects of commerce a mark belonging to another party;

(c) Those who have knowingly sold or put up for sale products marked with a counterfeit mark or to which such a mark has been affixed. (Art. 8.)

A punishment by a fine of 4,000 francs, and imprisonment of one year, or one of these penalties, is inflicted, in case of a renewal of the offense, as stated in Article 8, by the same offender within five years after the last penalty imposed upon him for a single offense. (Art. 10.)

#### *Assignments.*

A trade mark cannot be transferred except with the transfer of the establishment of the goods which it serves to distinguish.

The assignment fee is 10 francs. (Art. 7.)

The transfer of a trade mark between individuals or by testament must be registered and can only take effect as regards a third person after the deposit of an extract of the act in the form prescribed for the deposit of the trade mark.

The question of assignment of trade marks has been subject to examination in the Belgian courts. Article 7 of the Belgian Law of Aug. 1, 1897, reads:

“A mark can be assigned only in connection with the establishment of which it serves to distinguish the products. The assignment takes effect, so far as concerns third parties, only after the recording of a copy of the instrument by which it is made.”

The recording of the assignment is the only means possible to make known to third persons the fact of the assignment, for there does not exist in Belgium any registry of the names of business firms. The Court of Brussels had before it the question whether the recording of the change of ownership was necessary in case of succession in intestacy. It decided in the affirmative, so holding on the strength of the preliminary draft of the law, which confined its terms to acts *inter vivos* and to testamentary dispositions, the article being changed in the final revision to cover any form of transfer. In practice, therefore, it will always be necessary to have recorded an extract from the public records, containing proofs necessary to establish the fact of succession, and the rights of those interested.

The Court of Cassation, on Jan. 12, 1905, rendered a decision as to the effect of recording an assignment, in so far as concerns acts of infringement. It has hitherto been the belief of several authors of high authority that acts of infringement, committed after the assignment but before it was recorded, could

be punished in a civil suit brought by the assignee after the assignment had been recorded. This theory of the retroactive effect of the law was based upon the idea that the infringer was in any case at fault, and that he could not complain if the rights invaded by him belonged to some person other than the one whom he supposed he was injuring. The decision rejected this theory, relying on the clear language of the law and said:

“So far as concerns third persons, and having in view the preliminary form of the law, the question is as to the intent of the Legislature. It was evidently to cause the right of the assignee, so far as concerns third persons, to arise solely at the time of registration, and to deny to it, in advance of that time, any legal existence.”

#### *Requirements.*

Power of Attorney (See Form No. 3, B. Singer's book of Forms); six facsimiles of the mark; and one electrotype.

#### *Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No special laws are in force to prevent the sale or importation of goods bearing false indications of origin, except those which merely approve the Convention of Paris of March 20, 1883, as modified by the Arrangement of Madrid of 1891 relating to the international registration of trade marks, and by the Additional Act of Brussels of December, 1900. The Convention of 1883 prohibits the importation of goods falsely bearing the name of any locality as indication of origin, but only provided that such indication is associated with a trade name of a fictitious character or assumed with fraudulent intention. Full protection is given by law to trade marks and to the trade names of manufacturers. The Public Prosecutor possesses the sole authority to enforce the measures of the Convention, but parties interested may request him to take steps to protect their rights.

Although there is no special law on the matter, by bringing an action under the Civil Code before Commercial Courts, merchants can restrain the sale of any goods bearing a false indication of origin if they are marked with the name of a town or district which is well known as a place where goods of that description are manufactured or produced. Only the merchants or manufacturers of the place in question could bring such an action. A criminal prosecution can also be brought by a purchaser of goods if he can prove that he has been deceived as to their origin and that the deception has caused him damage. For infringement of his trade mark or trade name a manufacturer could obtain redress in either a Criminal or Commercial Court. The cost of a criminal case is practically nil, except the law-

yer's fee. In a commercial case the costs for service of writ are about 15 francs, and no further expenses have, as a rule, to be paid except a proportional duty on damages obtained if the case is successful, lawyer's fees, and the costs necessary for execution of judgment. The costs are small compared with those of U. S. or English litigation.

Marking Goods: "Marque Déposée."

*Priority of Use.*

The Belgian law provides that he who has first made use of a mark shall alone have the right to register it and to invoke the protection of the courts in that country. It has been held that prior use by a foreigner in his own country, provided that country grant to Belgian citizens reciprocal privileges, is sufficient to confer the right to such registration and protection even against a subject of Belgium who in ignorance of the rights of his foreign rival has used the mark in his own country before registration there.

In one case in which this question was in controversy, the plaintiff had used its mark in France since 1862, registering it in Belgium in 1891. Defendant had used the mark in Belgium since 1883, but it was held that the protection accorded by the plaintiff's registration dated back to the time of its first use of the marks. Therefore it mattered not that another had used the mark in Belgium long before its registration there by the plaintiff. (P. Florent et Cie. c. Fayen, La Propriété Industrielle, 1904, p. 168.)

It is well established in the law of Belgium that it is priority of use and not priority of registration that gives title to the mark. While it is necessary to register in order to enforce the right to the mark as against an infringer, yet the only valid registration is that of the first user of the mark. Registration creates a presumption of title, which, however, is capable of being rebutted by evidence of prior use by a third person. (Marques de Fabrique et da Commerce, Alexandre Braun, Brussels, 1880.)

Furthermore, it would appear to be the law of Belgium, not only that priority of use within the country itself will give title to the mark, but that priority of use even outside the country, in a country giving reciprocal protection to the marks of Belgium's citizens, will be similarly recognized as the basis of a superior title.

An important decision of the Tribunal of Termodé deals with the result of expiration of a trade mark registered under the Belgian law, and defines the rights of the owner of the trade mark, after such expiration.

The court held, in effect, that the registration conferred no title to the mark, title being dependent only upon priority of adoption and use. Therefore, the failure to renew the registra-

tion within the time prescribed, while it would suspend the right of the registrant to protect the mark under the law, did not cause him to lose any of his rights in the mark as such. A subsequent registration by the owner would have all the force and effect of the original registration under the law. (*De Buysscher vs. Buys & Co.*, *Revue Pratique du Droit Industriel*, 1912, p. 24.)

#### *International Convention.*

The extent of the protection obtained by the registration of a trade mark in one of the countries adhering to the international arrangement of 1891 for the registration of trade marks, was the subject of a decision by the criminal court of Brussels in April, 1910. This court holds, that the protection in each of the states, parties to the arrangement, dates from the time of the registration of the mark at the international bureau in Berne and that the further step, of notification by the international bureau to the divers states of the Union, is not necessary, as a condition of obtaining protection in those several states. The right, therefore, to prosecute counterfeiters in any of the states does not depend upon the accomplishment of the formality of official notification to that and the other states.

The same case holds that the word "Elegants," "Elegant," as applied to cigarettes, is not descriptive, since it conveys no idea of the article, or its nature or qualities. On the contrary, it partakes of the character of a fantastic designation of the goods.

In the court of appeals of Brussels, it has been held that where a trade mark had been registered in one of the states, a party to the international convention, but there has been a failure to register in the other states within the four months period allowed, within which a right of priority may be secured by the owner of a trade mark, the right of the owner in any of the other countries of the Union is subject to the rights acquired by any third person in the meantime; as, for example, by the registration or use of the same mark. The plaintiff in the action registered its trade mark in France on March 29, 1904, but neglected to secure registration in Belgium until December 23, 1906. The defendant, on the other hand, began to make use of the mark on February 28, 1906, and such use having taken place in Belgium while the plaintiff's mark was not protected in Belgium, there was no ground for action against the defendant. (*Mareschal & Co. vs. Zunsheim & Co.*, *La Prop. Ind.*, 1910, p. 163.)

#### DECISIONS.

##### *Unfair Competition by Price Cutting in Belgium.*

A decision of the Tribunal of Commerce of Brussels, under date of March, 1905, develops a remarkable feature of the law of unfair competition in that country and is strongly suggestive of

the French law in such cases. A merchant placed on sale with a great flourish of advertising a well known product of his competitor at a very low price, at the same time puffing a similar article of his own make, which he offered for sale at a much higher price. The decision of the Court condemned the defendant's practice and laid down the following principle applicable to such cases:

"Nobody supposes that a merchant cannot sell or dispose of his merchandise at a price less than its cost whenever he shall judge it to be for his interest to unload a particular stock or kind or quality of goods, even though he pursue the policy of sacrificing certain articles to gain an advantage in respect to others; for every one is free to dispose as he will of what he has legitimately acquired. Nevertheless, the merchant cannot by such an act through fraud or malice prejudice another."

Passing upon the circumstances of the case before it, the Court decided that the defendant had with premeditation put on sale the plaintiff's merchandise, not with the expectation of suffering the prejudice which would come from its sale at the price fixed, but for the purpose of vaunting his own product and for the sake of the advantage which he would gain by the demand for his goods unfairly created in this way, in the expectation that his goods and not the goods of his rival would be sold. Thereby he sought to create a fictitious reputation for his goods and one unjustifiable by the circumstances of the market and to cause prejudice to another dealer. (*La Propriété Industrielle*, 1905, p. 233.)

#### *Rights of Foreign Citizens.*

The court of appeals of Liege has affirmed the judgment of the lower court. The mark alleged to have been infringed, the property of a British subject, consists of two figures "8," the lower parts being larger than the upper, and interlaced one with the other. The upper and lower loops are separated by an arrow. The mark claimed to infringe consists merely of two figures "8" placed side by side, not interlaced but tangent one with the other.

Notwithstanding the fact that the plaintiff's mark had been registered in Belgium, the court of appeals holds that it is not entitled to protection, inasmuch as the mark complained of, if in conflict with the complainant's, is shown to have been used in Belgium prior to the registrant's use of his mark there. The presumption of priority existing under the law in favor of the registrant is accordingly overcome, the registration being merely prima facie evidence of priority, subject to rebuttal by proofs that may invalidate the registration in favor of some prior user.

Moreover, it was held that the English plaintiff could have no

greater rights in Belgium than he had at home. The law of Great Britain prohibits the registration as a trade mark, or a mark consisting of figures only, so that the mere numeral 88 is not registrable under the English law or entitled to protection. It is evident, therefore, that the plaintiff's mark was registered in England by reason of the distinctive features which differentiate it from the mere numeral, to-wit, the interlacing lower loops and the arrow. It would, therefore, be contrary to all the requirements of law and good sense to hold that a mark in the form of a bare numeral could be confused with one sufficiently different in design from the numeral to be registered as a trade mark when the numeral itself could not be registered. It would be equally illogical and unreasonable to hold that the owner of the trade mark registered in England could punish as an infringement upon his mark something which the law of his own country would not recognize as a trade mark at all. The mark complained of being one open to common use in England, the plaintiff is entitled to no greater protection against its use, nor to any more extensive property in his own mark, than that granted by the law of his native country. (Johnstone vs. Grah & Lovinfosse, *Revue Pratique du Droit Ind.*, 1910, p. 95.)

#### *The Test of Infringement.*

With respect to the test applied by the courts, to determine when the infringement of a trade mark exists, the Belgian law is not different from our own. In several cases, decided within the last three months, it has been held to be the law, that an infringement should be considered as existing, if there is such a similarity between the original mark and the mark claiming to conflict with it, as would mislead a person giving only the ordinary and usual attention thereto. It is not necessary that the imitation be close, nor that there exist between the two marks an absolute resemblance. It is enough that their external appearance and the general impression which they make may mislead and cause confusion between the products which they are respectively intended to distinguish.

Differences of detail, which would appear when the two marks were placed side by side, are not sufficient to avoid the charge of infringement, where the similarity is such as will confuse a purchaser, who does not have the two marks before his eyes for purposes of comparison. (*Societe Derbaix vs. Societe Suchard*, *Revue Pratique du Droit Ind.*, 1910, p. 57.)

#### *The Wrapper as a Trade Mark.*

In the decision last cited, the commercial court of Gand held that under the Belgian law any marking which served to distinguish the products of an industry might be considered a trade

mark. To reach this determination, resort was held to the studies preliminary to the law and to the official circular, subsequently interpreting the same. From these, it was evident that the wrapper of an article, or the manner of packing it, could be taken as a trade mark if distinctive, characteristic, special and new in the industry in which they are employed.

#### *Liability of an Infringer.*

The court of appeals of Liege has held, that the withdrawal of the infringing mark after the institution of the suit does not suffice to absolve the owner of the mark from liability for the damage suffered before the action was brought. (Carabaux vs. Hardy, *Revue Pratique du Droit Ind.*, 1910, p. 63.)

#### *Rights of Foreign Citizens.*

The court of appeals of Brussels, Belgium, has decided a case that is of the utmost importance, as affecting the rights of citizens of foreign countries under the Belgian trade mark law.

The provisions of that law with which the decision was concerned are, that persons carrying on business in Belgium, whether natives or foreigners, enjoy the benefit of the law, upon fulfilling the requirements relative to registration, while persons carrying on business outside of Belgium, whether Belgians or foreigners, have no benefit of the law unless, by treaty arrangements with the country where they are located, the reciprocal protection of the marks of Belgian citizens has been secured. Thus, it will be seen that the right of a Belgian citizen to protection under this law depends, not upon his citizenship, but upon his residence in Belgium, or in a country where treaty arrangements secure protection to Belgian marks.

A French company which has no establishment in Belgium but which had there registered its trade mark, brought a suit to punish infringement thereof in Belgium. It was held, however, by the court, that, there being no existing treaty with France securing to Belgian trade marks the reciprocal protection contemplated by the Belgian law, the action by the French firm could not be sustained. The fact that at the time the registration was made in Belgium such a treaty was in force between the countries, did not help the plaintiff, inasmuch as the treaty had expired by limitation, before the acts complained of and before the bringing of the suit.

Although France and Belgium were both parties to the International Convention of 1883, it was held that there was nothing in that convention to secure to a French citizen a greater measure of protection to his trade marks than that recognized in the deci-



sion, for the reason, that the convention secures to French citizens only the rights which the Belgian trade mark law accords to its own citizens; and, since its own citizens are unprotected unless they carry on business in Belgium, the citizens of foreign countries, doing business in Belgium, must remain without protection, under the like circumstances.

The result of this decision is to hold that a citizen of any country, whose rights are not secured as above mentioned by treaty, is without protection for his trade marks in Belgium, notwithstanding their registration there. The registration is, in fact, without any value whatever, as to such marks. (*Hebebrand vs. Societe Française Coton*, November 18, 1910, *Propriété Industrielle*.)

This condition would be one well calculated to cause apprehension in the minds of American owners of trade marks who have registered there, were it not that by treaty between the United States and Belgium, signed on March 8, 1875, the reciprocal rights of Belgian and American citizens in the several countries are defined. The treaty recites, that the parties are desirous of obtaining a complete and effective protection to the industry of their respective citizens and they, therefore, agree that every infringement, in either country, upon the trade marks applied to merchandise manufactured in the other country, shall be a ground for action before the courts of the respective countries; provided, however, that the mark so infringed upon, has been duly registered in accordance with the Belgian and United States laws. This treaty, supplemented by a later treaty of July 7, 1884, appears to secure the right to American citizens, who have registered their trade marks in Belgium, of resorting to the Belgian courts for protection against infringers.

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It has been held by a Belgian court that the sale of cigars which bore a mark similar to one regularly registered, could not be justified upon the ground that the seller acted in good faith, when, knowing from his acquaintance with the cigar trade that such cigars were commonly sold by the owner of the trade mark in boxes, although he had bought them loose, he had neither made inquiry for an explanation of the circumstance from the owner of the trade mark, nor from the seller of the cigars. These facts were held to show that, in the purchase of the cigars, he must have known that the marks which they bore were counterfeit or fraudulently applied.

In the calculation of the damages, the court said, account should be taken of the loss of profits which the owner of the mark had suffered in the sale of his wares and the depreciation in the value of his trade through the sale of wares at a much inferior price under the counterfeit marks.

The court further held that goods bearing the infringing marks in the hands of third persons, and their property, could not be confiscated in the proceeding. (*Henry Clay & Bock Co. vs. Van Houten*, *Journal des Tribunaux*, 1908, p. 280.)

Upon the question of abandonment of a trade mark, it is held that this is not to be presumed, except from unequivocal acts. The mere usurpation of the trade mark by others is not to be considered evidence of such abandonment by the real owner, even though the others have registered the mark as their trade mark, unless it be proven that these facts have been known to the owner of the mark.

In cases of infringement of trade marks, the fact that the infringer has taken great pains to bring about a similarity between his products and those of his competitor, by employing the same color of paper for the wrapper of his packages, giving to them the same dimensions, arranging the characters above them in the same manner, and making the package of a similar form, shows the fraudulent intention that he has, to infringe upon the mark in question. (*L'Etat Francais vs. X.*, *Revue Pratique du Droit Industriel*, 1910, p. 161.)

The criminal court of Audenaerde holds, that one who undertakes to manufacture for another merchandise under a trade mark specified by the latter, recognizes the prior right of his employer to the trade mark and is estopped thereafter to deny it, when subsequently prosecuted for infringement upon the mark. In this instance, one who had adopted the word "Phonograph" for sewing cotton shortly thereafter engaged the plaintiff in the suit to manufacture the goods under this mark for him. The latter thereafter registered the trade mark as his own in Belgium and continued the use thereof. Thereafter he brought suit against another party for infringement of the trade mark and the manner in which the plaintiff first came to use the mark having been shown in defense, it was held that he had no rights which the court would protect.

It was furthermore made clear by the court that the law would not protect him who registered or used a trade mark that he had not created and which had already been used by others, whether within or without Belgium. The mark in question had been long established in the English market by the originators thereof. (*Société A vs. V. S.*, *Revue Pratique du Droit Industriel*, 1910, p. 166.)

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## BERMUDA

This colony consists of a cluster of about 360 small islands, 18 or 20 of which are inhabited; the rest are of inconsiderable size. The largest, or Bermuda proper, contains only 20 square

miles of land, and nowhere exceeds three miles in breadth. The population of the islands (1907) is estimated at 19,299. The islands are of great importance as a Naval Station. At Ireland Island, one of the group, are His Majesty's Dockyard and some other considerable naval establishments.

The only trade consists in the export of early agricultural produce to the United States. It is famous for its arrowroot, said to be the finest in the world, and this, with onions, potatoes, tomatoes and lily bulbs, constitute the exports.

The enormous disproportion between the value of the exports and that of the imports is owing to the circumstance that nearly every article required for the food or for the clothing of the entire civil population, garrison and fleet is imported from abroad, principally from the United States.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

#### *Law.*

Act No. 51 of the 18th of November, 1902.

#### *Duration—Renewals.*

Trade Marks are registered for a term of fourteen years, counting from the date of registration. A mark may be renewed upon the register indefinitely for successive periods of fourteen years each, upon due application and payment of the prescribed fee.

A mark removed from the register for non-payment of the prescribed fee may be restored, if the Registrar is satisfied that it is just to do so.

A trade mark removed from the register, for any cause, will for the purpose of any application, during one year next after the date of such removal, be deemed a registered trade mark unless it is shown to the satisfaction of the Registrar that the cause arose from the death, bankruptcy or cessation of business of the registered proprietor, and that no one claiming under him or his bankruptcy is using such trade mark.

#### *What May be Registered.*

A trade mark must consist of, or contain at least one of the following essential particulars:

A name of an individual or firm printed, impressed, or woven in some particular or distinctive manner; or

A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

A distinctive device, mark, brand, heading, label or ticket; or  
An invented word or invented words; or

A word or words having no reference to the character or quality of the goods, and not being a geographical name.

There may be added to any one or more of the essential particulars mentioned in this section any letters, words or figures, or combination of letters, words or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer must be entered on the register.

Provided always as follows:

A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof; and

Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade mark either in this Colony or elsewhere before this Act came into operation, may be registered as a trade mark. (Art. 29.)

Any distinctive word or combination of words, or in case of a trade mark used in the Colony or elsewhere before the Act came into operation, any distinctive device, mark, brand, heading, label, ticket, letter or figure, or combination of letters, words, or figures, may be entered as an addition to any trade mark, although the same is common to the trade in the goods with respect to which the application is made.

Any device, mark, brand, label, ticket, letter, word, figure, or combination of letters, words, or figures which was or were used publicly by more than three persons in the Colony or elsewhere before the Act came into operation, on the same or a similar description of goods is deemed common to the trade in such goods.

The registration of a person as a proprietor of a trade mark shall be prima facie evidence of his right to the exclusive use of the trade mark, and shall after the expiration of five years from the date of registration be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of the Act.

A trade mark must be registered for particular goods or classes of goods. A trade mark may be registered in any color, and such registration will, subject to the provisions of the Act, confer on the registered owner the exclusive right to the use of the same in that or any other color. Every application for registration of a trade under this Act is required as soon as practicable after its receipt to be advertised by the Registrar in the Gazette, unless he shall refuse to entertain the application.

*Registration of a Series of Marks.*

When a person claiming to be the proprietor of several trade marks, which, while resembling each other in the material particulars thereof, yet differ in respect of

- (a) The statement of the goods for which they are respectively used or purpose to be used, or
- (b) statement of numbers, or
- (c) statement of price, or
- (d) statements of quality, or
- (e) statements of names of places, seeks to register such

trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole; but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately. (Art. 31.)

*What May Not be Registered.*

It is not lawful to register as part of, or in combination with a trade mark any words the use of which would, by reason of their being calculated to deceive, or otherwise, be deemed disentitled to protection in England according to the law and practice there in such matters. The Registrar may refuse to register a trade mark the use of which would be scandalous or contrary to law or morality.

Except where the court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the Registrar may not register in respect of the same goods or description of goods a trade mark identical with one already on the Register with respect to such goods or description of goods, or having such resemblance to a trade mark already on the Register with respect to such goods or description of goods as to be calculated to deceive. (Art. 37.)

*Assignments.*

A trade mark, when registered, may be assigned and transmitted only in connection with the good will of the business concerned in the particular goods or classes of goods for which it has been registered, and will be determinable with that good will. Where a person becomes entitled by assignment, transmission or other operation of law to a registered trade mark the Registrar will, upon request and on proof of title, cause the name of such person to be entered as the proprietor of the trade mark in the Register of Trade Marks. The person so registered as a proprietor of the trade mark will, subject to the provisions of the Act and any rights appearing from such Register to be vested in any other person, have power absolutely to assign, grant licenses

as to, or otherwise deal with, the same, and to give effectual receipts for any consideration for such assignment, license or dealing; provided that any equities in respect of such trade mark may be enforced in like manner as in respect of any other personal property; provided also that the priority of all assignments and charges shall, as regards purchasers for value without notice, be determined by priority of registration. No notice of any trust, express, implied or constructive, may be entered upon the Register. A series of marks are assignable only as a whole. (Art. 43.)

#### *Application and Procedure.*

The Registrar may, on application by or on behalf of any person claiming to be the proprietor of a trade mark and on payment of the prescribed fee, register the trade mark.

The application must be accompanied by the prescribed number of representations of the trade mark and must state the particular class of goods or classes of goods in connection with which the applicant desires the trade mark to be registered.

The Registrar may, if he thinks fit, refuse to register a trade mark, subject to appeal to a Judge in Chambers.

The application for the registration of a trade mark will be deemed to be equivalent to the public use of the trade mark and the date of the application will for the purposes of the Act be deemed to be the date of registration.

Where the registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the application will be deemed to be abandoned.

#### *Oppositions.*

Any person may within three months after the first advertisement of an application for registration give notice in duplicate to the Registrar of opposition to registration of the trade mark, and the Registrar will give notice of such opposition to the applicant.

Within one month after the receipt of such notice, or such further time as the Registrar shall allow, the applicant may send to the Registrar a counter-statement in duplicate of the grounds on which he relies for his application, and if he does not do so shall be deemed to have abandoned his application. On receipt of such counter-statement, or where each of two or more persons claim to be registered as the proprietor of the same trade mark, the Registrar may refuse to register any of them until their rights have been determined by the Court. (Art. 34.)

#### *Infringement.*

The Court may restrain any person from infringing a trade mark and damages for such infringement may be recovered by

action in the Court of General Assize if such trade mark has been registered, or if registration thereof in the Register of Trade Marks has been refused, but in no other case. The Registrar on request, and on payment of the prescribed fee, may grant a certificate that such registration has been refused. (Art. 41.)

In an action for infringement of a registered trade mark the Court or the Judge may certify that the right to the exclusive use of the trade mark came into question, and, if the Court or the Judge, so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment in his favor, shall have his full costs, charges and expenses as between Solicitor and client, unless the Court or the Judge trying the subsequent action certifies that he ought not to have the same. (Art. 42.)

#### *Alterations or Amendments.*

The registered proprietor of any trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of the Act, and the Court may refuse or grant leave on such terms as it may think fit.

Notice of any intended application to the Court under this section must be given to the Registrar by the applicant, and the Registrar is entitled to be heard personally, or by solicitor or counsel, on the application, and the Court may make such order as to the Registrar's cost as it may think fit.

If the Court grants leave the Registrar will on proof thereof, and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave. (Art. 44.)

#### *Documents Required.*

1. Application, signed by the applicant. No legalization required.

2. Three representations of the mark, one to be fixed within the blank space left in the application and the two others on separate sheets of foolscap of same size.

3. Power of attorney, signed by the applicant. No legalization required.

(Form for application may be obtained from B. Singer's offices.)

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## BOLIVIA

The area of this Republic is about 911,146 square miles. The population in 1911 was estimated at about 2,380,520, including uncivilized Indians.

The natural wealth of Bolivia is very great; the alpaca llama and the vicuna abound, and also the chinchilla, the nutria and other fur bearing animals; valuable cabinet and building woods and also dye woods are plentiful; cotton, coca, cocoa, and caoutchouc are also produced; the latter is now exported in large quantities from the eastern territories.

Gold, silver, copper, tin, lead, iron and bismuth are also abundant; in fact the great business of the country is silver and tin mining; the second largest silver mine in the world is that of Huanchaca.

**MONEY, WEIGHTS AND MEASURES**—The monetary unit of Bolivia is the Boliviano=to 100 Centavos=40 cents U. S.

For weights and measures, Bolivia has adopted the metric system.

#### *Laws.*

Law of November 5, 1893; decree of March 27, 1897 and May 20, 1902.

#### *Duration.*

Indefinite. A tax of 5 Bolivianos per year, to be collected through the Department of the Treasury and Industry, shall be hereafter levied on every trade mark which may be filed for registration at the proper office. (Art. 1.)

#### *What May be Registered.*

The following shall be considered as trade marks, namely: Engravings, monograms, vignettes, stamps in relief, letters and numerals with a special design, casks or wrapping of articles, and any other signs intended to distinguish from all others the products of a factory. (Art. 2.)

The registration of marks is *compulsory* and no article bearing a mark can be sold or exposed for sale in Bolivia unless the mark has been previously registered, under penalty of a fine of 5 to 50 Bolivianos and the registration which was not effected.

Merchandise of a particular trade mark, ordered from abroad prior to the date of the filing of the application with the Prefect for registration of the same trade mark, shall not be considered articles of commerce bearing a counterfeited trade mark. (Art. 3.)

#### *Mode of Application.*

All applications shall be accompanied by two copies or samples of the engraving, emblem, letter, stamp in relief, etc., which is to be used. One copy shall be filed at the registration office and the other forwarded to the Department of "Fomento." (Art. 6.)

The application shall also be accompanied by a description of the mark, made in duplicate, said description to specify the article or articles for which it is intended. If the owner of the



mark does not personally attend to the business of this application, the power of attorney authorizing the applicant to act in his behalf shall also accompany the application. (Art. 7.)

No application shall be admitted if it is not accompanied with a receipt issued by the Department of the Treasury showing that the tax established by Article 1 of this decree has been paid. Failure to comply with any of the provisions of this article shall cause the respective functionary to be responsible for the value of the patent. (Art. 8.)

The Prefects, after having complied with all the requisites established in the foregoing articles, shall grant in the name of the nation the exclusive right to use the trade mark. The decree by which this grant is made, as well as the application itself with all its exhibits, shall be published in the Official Bulletin, and if there is no such Bulletin, in any newspaper to be designated for that purpose, the publication to be made three separate times, ten days intervening between each, at the cost of the interested party. (Art. 10.)

After the publication is made as directed in the foregoing article, the applicant shall request, if no opposition has been shown to the granting of the trade mark, that the whole record should be forwarded to the Secretary of "Fomento," in order that he, upon the proper report of the law officer of the Department, may approve the concession. (Art. 11.)

If any opposition is made after the expiration of the time of publication, the Prefect shall refer the whole record to the District Attorney, who shall decide about the priority of rights according to law. (Art. 12.)

If the decision of the Prefect is against the granting of the trade mark, an appeal may be taken against it within eight days, to be counted from the date of notification, to the Secretary of "Fomento," who, after hearing the opinion of the Attorney-General, shall affirm or reverse the decision. The decision of the Secretary of "Fomento" shall be final. (Art. 13.)

The samples of marks, or emblems, and their descriptions shall be faithfully kept, duly inventoried, and methodically classified, by the Notary of the Treasury. They shall be exhibited for public inspection in well arranged cases. (Art. 14.)

#### *Fines.*

Counterfeiters of trade marks, adulterators of articles of commerce of a business house which makes use of a trade mark and sellers of counterfeited articles shall be punished with a fine of from 20 to 200 Bolivianos, independently of the penalties mentioned in Article 302 of the Penal Code. (Art. 15.)

Articles of merchandise bearing counterfeited trade marks shall be confiscated to the benefit of the Departmental Councils. (Art. 16.)

Business men who prior to the enactment of this decree have been making use of a trade mark which proves to be identical with another trade mark granted under the new provisions shall be bound to adopt some change or modification of their distinctive sign or emblem. Their failure to do so shall render them liable to be punished as counterfeiters. (Art. 17.)

Business men who make use without the proper authority of a trade mark shall be punished with a fine of from 5 to 50 Bolivianos, for the municipal fund, without prejudice to their being compelled to secure in the proper way the authority required by this decree. (Art. 18.)

Joint stock companies are entitled to the use of their names without any restriction. (Art. 19.)

Foreign trade marks shall not enjoy the guarantees granted by the present decree unless they are registered with the same formalities as are established for the domestic ones. (Art. 20.)

Business men who fail to pay the taxes due on account of their trade marks shall be subject to the process of coercion established by law against delinquents of this kind. If the payment is not made after the first notice, a sufficient number of the articles of commerce protected by the mark shall be seized and sold at public auction. The amount of the tax and a penalty of 2 per cent per month shall be collected by this process. The concession of the trade mark may be also cancelled. (Art. 21.)

Business men who after having been punished as provided in the foregoing article should continue to make use of the trade mark, shall be prosecuted as counterfeiters. (Art. 22.)

#### *Assignment.*

The sale of the business house, or industrial enterprise to which the mark belongs, shall carry with it, unless provided otherwise by the contracting parties, the transfer of the mark. (Art. 4.)

The transfer of the mark shall be, for the purposes of this decree, recorded at the proper office. (Art. 5.)

#### *Requirements.*

Power of attorney, legalized by the Bolivian Consul; (See Form No. 1, B. Singer's book of forms); two facsimiles of the mark. The dimensions and colors used in every mark that consists of labels or typical designs must be given.

#### *Trade Mark Registration Compulsory.*

Business men who make use without the proper authority of a trade mark shall be punished with a fine of from 5 to 50 Bolivianos, for the municipal fund, without prejudice to their be-

ing compelled to secure in the proper way the authority required by this decree. (Art. 18.)

According to Article 18 of the Regulations of 1897 for the execution of the law a fine of from 5 to 50 Bolivianos as a penalty is imposed for the use of marks or emblems without registration.

A circular of the Minister of the treasury calls attention to the fact that the fiscal interests of the country are suffering from the neglect to observe the requirements of the trade mark law on the part of merchants and manufacturers, very few of whom comply with the law with respect to registration, or pay the annual tax assessed upon trade marks. Thus the few traders who obey the law seem to be put in a worse position than those who neglect it, while the treasury is deprived of a considerable income. The Minister, therefore, requests that prefects of the several departments give due execution to the law, which imposes pecuniary fines for the benefit of the state upon those who use trade marks without the sanction of registration. (150 O. G., p. 1045.)

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## BRAZIL

The area of the Republic of Brazil has been calculated at 3,218,130 square miles, divided over the following States:

<i>States</i>	<i>Capitals</i>
Amazonas .....	Amazonas
Ceara .....	Ceara
Para .....	Para
Maranhao .....	Maranhao
Piauhy .....	Therezina
Parahyba .....	Parahyba
Rio Grande do Norte .....	Natal
Pernambuco .....	Pernambuco
Alagoas .....	Maceio
Bahia .....	Bahia
Sergipe .....	Aracaju
Espirito Santo .....	Victoria
Federal District .....	Rio de Janeiro
Rio de Janeiro .....	Nictheroy
Sao Paulo .....	Sao Paulo
Parana .....	Curityba
Santa Catharina .....	Desterro
Rio Grande do Sul .....	Porto Alegre
Minas Geraes .....	Bello Horizonte
Goyaz .....	Goyaz
Matto Grosso .....	Cuyaba

It extends along the Atlantic coast from Guyana in the North to the borders of Uruguay in the South, a distance of about 41,190 miles and extends inland about 2,500 miles. The population in 1910 was 20,415,320.

Brazil possesses three great rivers. The most remarkable is the Amazon; next, the Paraguay, (one of the tributaries of the River Plata), and finally the San Francisco. The Amazon which flows through the territory of the Republic for a distance of more than 500 leagues, receives 18 affluents, nearly all rivers of the first order. They afford uninterrupted navigation for steamers for a distance of 7,351 leagues above the first falls, which exist on the boundaries of the Province of Para and Amazonas. By means of the Amazon and its affluents, it is possible to reach the Republics of Bolivia, Peru, Ecuador, and Venezuela. For a quarter of a century steamers have been running up and down this river with the greatest regularity, performing in ten days a distance of 580 leagues between Para and Tabitingo on the frontier of Peru.

COMMERCE—Brazil is essentially an agricultural country, and produces in the north large quantities of India-rubber, cocoa, sugar cane, piassava, nuts and medicinal plants. The central states principally produce cotton, sugar and tobacco, whilst in the provinces of Minas Geraes Espirito Santo, Rio de Janeiro, and Sao Paulo coffee is raised, and in the south, cereals, hides, etc. The country abounds in mineral wealth, gold, silver, iron, coal and copper mines, besides diamonds and other precious stones.

MONEY, WEIGHTS AND MEASURES—1 milreis (1,000 reis)=2s. 3d., or 30 cents.

For weights and measures, the metrical system has been adopted.

#### *Laws.*

October 14, 1887, and September 24, 1904.

#### *Term.*

The registration shall be valid for all purposes for fifteen years, at the end of which time it can be renewed, and so on thereafter.

The registration shall be regarded as null and void, if the owner of the registered mark shall not make use of it within the terms of three years. (Art. 11.)

#### *What May be Registered.*

The producer or merchant has the right to distinguish his merchandise or products by means of special marks. (Art. 1.)

Industrial and trade marks may consist of everything which

this law does not prohibit and which may distinguish articles from others, identical or similar, of different origin.

Any special or common denomination, partnership designation or signature and letters or ciphers only, will serve for this purpose if invested with a distinctive form. (Art. 2.)

*The Following Cannot Be Registered.*

1. Coats of arms, armorial bearings, decorations or insignia, public or official, domestic or foreign, when their use has not been duly authorized.

2. A commercial or partnership name which the petitioner cannot lawfully use.

3. The indication of a fixed locality or establishment which is not that of the original of the article, whether there be joined to this indication a fictitious name or another's name or not.

4. Words, images or representations which involve offense to individuals or to public decorum.

5. The reproduction of another mark already registered for an article of the same kind.

6. Total or partial imitation of a mark already registered for a product of the same kind which may mislead or confuse the buyer. The possibility of error or confusion will be considered to be verified whenever the differences of the two marks cannot be recognized without comparison or attentive examination. (Art. 8.)

*Mode of Application.*

To obtain registration a petition by the party interested, or his attorney, is necessary, accompanied by three samples of the mark, giving a full explanation and description of the mark; a declaration of the article of industry or trade for which the mark is intended; the full name, address and occupation of the applicant; and certified copy of the home registration.

It is not possible to obtain in Brazil a better protection than that in the country of origin, and the claims are limited to those set forth in the certificate of home registration.

In case the owner of a mark applies for registration of a trade mark not registered in the home country, he may register the same by—

1. Furnishing a certificate showing that the mark has not been registered in the home country.

2. A legal document showing that the applicant has a commercial or industrial establishment in the country where he registers.

Both of these documents must be legalized by a Brazilian Consul.

Foreigners who, instead of depositing the certificate of registration made in their respective country, petition directly the

registration of their mark in Brazil, shall enjoy the guaranties of the present law.

As soon as a petition is presented for registration the secretary of the Junta Commercial will give the party a receipt, and when the registration is ordered he will certify to the same.

Within thirty days from date of registration the applicant shall publish in the official newspaper, giving a full description of the mark, etc. The description of the mark, the respective certificate copied in full from one of the samples which, with the other from the newspaper, he shall deposit in the Junta Commercial of Rio de Janeiro within sixty days, reckoned from the same date.

#### *Assignments.*

The mark can only be transferred together with the product of industry or trade for which it has been adopted after it has been duly entered in the register, upon examination of authentic documents.

A like note shall be made should the firms be altered and the mark still continue to be used. In both cases publication is necessary. (Art. 12.)

#### *Penalties.*

The following persons shall be punished with imprisonment from six months to one year and a fine, for the use of the State, of 500 to 5,000 milreis:

1. Whoever uses a legal mark of another person on products of false origin.
2. Whoever uses a wholly or partly counterfeited mark belonging to another person.
3. Whoever sells or offers for sale articles bearing a legal mark, the owner of which is not the producer of said articles.
4. Whoever sells or offers for sale articles bearing a mark wholly or partly counterfeited or belonging to another.
5. Whoever reproduces wholly or in part, by whatever means, any industrial or trade mark duly registered and published without permission of the owner or his legal representative.
6. Whoever imitates an industrial or trade mark, in such a manner that the buyer may be deceived.
7. Whoever uses a mark so imitated.
8. Whoever sells or offers for sale articles bearing an imitated mark.
9. Whoever uses a commercial or firm name which does not belong to him, whether it forms a part of a registered mark or not. (Art. 13.)

The following persons shall be punished with a fine of 100 to 500 milreis for the use of the State:

1. Whoever without due authority, uses, as an industrial or

trade mark, arms, armorial bearings, or public or official insignia, domestic or foreign.

2. Whoever uses a mark which offends public decorum.

3. Whoever uses an industrial or trade mark which contains an indication of a locality or establishment which is not that of the place of origin of the merchandise or product, whether there be joined to this indication another's name or a fictitious one or not.

4. Whoever sells or offers for sale merchandise or products bearing marks such as are set forth in Nos. 1 and 2 of this article.

5. Whoever sells or offers for sale merchandise or products such as are set forth in No. 3. (Art. 14.)

Whoever uses a mark containing anything personally offensive, or who sells or offers for sale articles bearing such a mark, shall be visited with the penalties of the preceding article. (Art. 15.)

Repetition of the offenses shall be punished with double the penalties.

#### *Requirements.*

Power of attorney, legalized by Brazilian consul, 10 copies of each mark; full description of each mark with claims and indication of goods; home registration legalized by Brazilian consul.

When the owner of the mark applies for registration of a trade mark not registered in the home country he must file the following documents: Power of attorney legalized by the Brazilian consul and certificate from the Patent Office showing that the trade mark has not been registered; document showing that applicant has a commercial or industrial establishment in the country where he resides.

(See Form 5, B. Singer's Book of Forms.)

#### *Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The laws in force prohibit the sale, but not the importation of goods bearing a false indication of origin. However, the importation of such goods can also be prevented since any manufacturer or trader in similar articles, established in the place purporting to be the place of origin of the imported goods, can have them seized and detained. The falsification and imitation of registered trade marks and the sale or exposition for sale of goods bearing falsified or imitated registered trade marks are punishable offenses. Foreigners receive this protection for trade marks registered in their country if their State grants reciprocal treatment to Brazilian trade marks or if it belongs to the Industrial

Property Union. It is not in the power of Representatives of Foreign Governments to take steps to enforce the laws. To take legal proceedings the party must be interested, i. e., a manufacturer or trader. The Customs Authorities can seize imported goods if their origin is suspicious, though, in view of the stringency of the Customs Regulations which require the origin of all articles to be stated in the Consular invoices (which must accompany all imported goods), false indications should be extremely difficult. Beyond those already mentioned, no special steps are taken to prevent the importation of goods bearing a false indication of origin. No requirements are in force as to the marking of imported goods to show the place of origin.

Marking of Goods: "Marca Registada."

#### *Priority.*

Registration under the Brazilian law is the sole foundation of the right to exclusive use. Priority of registration confers superiority of right. It is only when conflicting trade mark applications are filed simultaneously that priority of use is material. In such a case the applicant who can show the earliest use is entitled to registration.

#### *Pure Food and Drug Law.*

The law requires that all proprietary remedies for introduction into Brazil be certified by licensed druggists in the country of manufacture; consequently, importers who desire to have their goods introduced into Brazil must furnish a formula certified by licensed druggists.

#### *International Convention.*

The National Congress has issued the following decree:

Decree declaring the provision of Article 33, No. 4, of Law No. 1236 of September 24, 1904, inapplicable to marks filed at the International Bureau at Berne by countries which have adhered or shall in the future adhere to the Arrangement of Madrid of 1891.

(No. 2085 of August 6, 1909.)

We, the President of the Republic of the United States of Brazil,

Make known that the National Congress has decreed and that we have sanctioned the following:

Article 1—The provision of Article 33, No. 4, of the law No. 1236 of September 24, 1904, is not applicable to marks filed at the International Bureau of Berne by the countries which have adhered or shall adhere hereafter to the Arrangement of Madrid of 1891.



Article 2—Every decision admitting the deposit or registration at the Junta of Commerce of Rio de Janeiro, of an international mark of the kind mentioned in Article 5 of the regulation established by decree No. 5424 of January 10, 1905, is subject to an appeal to the Supreme Federal Tribunal; this appeal is within the right of anyone who finds himself injured by the said deposit as far as concerns a national mark previously admitted to registration and published.

Single Paragraph—This appeal must be lodged within a period of five days from the date of the publication of the decision accepting the deposit; but it will commence to run 30 days later if the injured party does not reside in the City of Rio de Janeiro and has not a special attorney there.

Article 3—All contrary provisions are revoked.

Rio de Janeiro, August 6, 1909, 88th year of Independence and 21st of the Republic.

(Signed) NILO PECANHA,  
FRANCISCO SA.

According to the above decree the provision of the Brazilian law requiring the publication of trade mark applications in the *Diario Official* shall not be applicable to international marks.

The decree further provided that every decision admitting an international mark to registration is subject to appeal to the Supreme Federal Court by any owner of a national (Brazilian) mark previously registered and published who considers himself injured by the registration. (*Bulletin of the Bureau of American Republics*, 1909, p. 941.)

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## BRITISH GUIANA

This colony, on the South American continent, extending from east to west about 280 miles, includes the settlements of Demerara, Essequibo and Berbice.

The population on December 31, 1911, was estimated at 352,187.

The exports consist chiefly of the produce of the sugar cane, the sugar from the country of Demerara being especially celebrated for its superior quality, also molasses and rum.

MONEY—One Dollar (100 cents)=50 cents United States.

WEIGHTS AND MEASURES—Same as Great Britain.

### *Law.*

Merchandise Marks Act of 1888 is on the lines of the British Merchandise Marks Act of 1887. Custom Regulations Aug. 9, 1898.

*Duration.*

Unlimited.

*What May Be Registered.*

A name of an individual, or firm, printed, impressed or woven in some particular or distinctive manner; or

A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

A distinctive device, mark, brand, heading, label, or ticket.

An invented word or invented words, or

A word or words having no reference to the character or quality of the goods, and not being a geographical name.

There may be added to any one or more of the essential particulars mentioned in this section any letter, words, or figures, or combination of letters, words, or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of added matter, and a copy of the statement and disclaimer shall be entered on the register.

*Requirements.*

Power of attorney, legalized by British Consul; a certificate of home registration verified by affidavit or statutory declaration of the proprietor; three copies of the mark and electrotype. Affidavits and statutory declarations must be sworn before a Notary Public in the United Kingdom or before the British Consul, in foreign countries.

(Forms for application may be obtained from B. Singer's Offices.)

## BRITISH HONDURAS

British Honduras is the only British dependency in Central America. The area of this colony, including the islands and bays, is 7,562 square miles. The population for 1911 was estimated at 51,210.

COMMERCE—The soil is remarkably fertile and produces bananas, plantains, cocoa-nuts, coffee, henequen, limes, mangoes, oranges, pineapples, tobacco and rubber.

The principal town is Belize, with a population of about 20,000.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Law.*

Merchandise Marks Ordinance No. 3 of 1888.

*Duration.*

Unlimited.

*What May be Registered.*

A name of an individual, or firm, printed, impressed, or woven in some particular or distinctive manner; or

A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

A distinctive device, mark, brand, heading, label, or ticket.

An invented word or invented words; or

A word or words having no reference to the character or quality of the goods, and not being a geographical name.

There may be added to any one or more of the essential particulars mentioned in this section any letter, words, or figures, or combination of letters, words, or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any rights to the exclusive use of added matter, and a copy of the statement and disclaimer shall be entered on the register.

*Requirements.*

Power of attorney; a certificate of home registration verified by affidavit or statutory declaration of the proprietor; three copies of the mark and electrotype.

*Offenses and Penalties.*

(1) Every person who—

(a) forges any trade mark; or

(b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(c) makes any die, block, machine or other instrument for the purpose of forging, or of being used for forging a trade mark; or

(d) applies any false trade description to goods; or

(e) disposes of or has in his possession any die, block, machine or other instrument for the purpose of forging a trade mark; or

(f) causes any of the things above in this section mentioned to be done, shall, subject to the provisions of this Ordinance, and unless he proves that he acted without intent to defraud, be guilty of an offense against this Ordinance.

(2) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any

goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

(a) That having taken all reasonable precautions against committing an offense against this Ordinance, he had at the time of the commission of the alleged offense no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(b) That on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) That otherwise he had acted innocently; be guilty of an offense against this Ordinance.

(3) Every person guilty of an offense against this Ordinance shall be liable—

(i) on conviction on information in the Supreme Court, to imprisonment, with or without hard labor, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(ii) on summary conviction to imprisonment, with or without hard labor, for a term not exceeding four months or to a fine not exceeding one hundred and fifty dollars, and in the case of a second or subsequent conviction to imprisonment, with or without hard labor, for a term not exceeding six months, or to a fine not exceeding two hundred and fifty dollars; and

(iii) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offense has been committed.

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## BRITISH NORTH BORNEO

The form of government is practically the same as in India, or other British colonies. The population, estimated at about 200,000, is made up of Malays, Bajaus, Sulus, Filipinos, various tribes of Dusuns of the interior, and about 50,000 to 55,000 Chinese on the coast and planting estates.

The trade and commerce is of considerable importance. The principal trading stations are Sandakan (the capital) on the east coast, and Jesselton and Kudat on the west coast. The imports fall under the following order of importance:—Rice, flour and grain, cloth, treasure, provisions, opium, ironware, spirits and wines, tobacco, sugar, kerosene oil, machinery and vessels, oils,

salt, stationery, earthenware and glassware, thread and yarns, fruits and vegetables, tea, aerated waters, building materials etc., etc. The chief exports are:—Estate grown tobacco, timber, cutch, coal, dried and shell fish, rattan, sago, flour, damar, wild rubber, birds' nests, treasure, estate rubber, copra, fruits and cocoa-nuts, live stock, etc., etc.

MONEY—One dollar (100 cents)=2s. 4d.=52 cents.

WEIGHTS AND MEASURES—1 picul =133 $\frac{1}{3}$  lbs. av.; 1 kati.=1 $\frac{1}{3}$  lbs. av.; 1 tahlil and 1 basin=1/16 kati=1 1/9 oz. av.; gantang: gallon; Mexican and British dollars are current in British North Borneo.

#### *Laws.*

Merchandise Marks Proclamation of 1891 and 1893.

#### *Who May Apply.*

Any person claiming the right to exclusive use of any trade mark either solely or jointly with others, may apply to the Governor for leave to register the same in the "Register of Trade Marks."

#### *Mode of Application.*

Every such application must be accompanied by a facsimile or specimen of the "trade mark" sought to be registered, verified by affidavit: and every such affidavit shall set forth the description and nature of the goods upon which such trade mark has hitherto been, or is intended to be used, and that the deponent is to the best of his belief entitled solely or jointly with some person or other persons therein named to the exclusive use of such trade mark.

Upon compliance with the formalities hereinbefore prescribed, it shall be lawful for the Governor, if he shall in his discretion think fit, to grant the application and to order the registration of the said trade mark in the register and the filing of all affidavits transmitted therewith in manner aforesaid.

Notice of the registration of a trade mark under this Proclamation shall be published in the Gazette, and the Register of trade marks shall be open to public inspection, at all reasonable times, on payment of such fee as may be fixed in manner hereinafter mentioned.

It shall be lawful for the Governor, at any time and on such grounds as he shall think sufficient, to cancel the registration of any trade mark under this Proclamation.

#### *Fees.*

Registration of trade mark \$5.00; filing affidavit, \$2.00; office copy of entry, \$3.00.

*Requirements.*

Power of attorney; 6 facsimiles of the mark; 1 electrotype.  
(Forms for application may be obtained from B. Singer's Offices.)

## BULGARIA

The area consists of about 37,860 square miles—viz., Bulgaria 24,360, South Bulgaria 13,500—with a population in 1911 of 4,109,178. The people are chiefly engaged in agricultural pursuits and the rearing of cattle, sheep etc. Coal and iron exist, but mining is not carried on to any large extent.

The principal trade is in cereals, wheat, rye, barley, oats and maize, wine, tobacco and silk. Attar of roses is also produced to a very large extent; the exports consist principally of grain, wool, hides etc., cereals alone amounting to about 80 per cent. of the total export. The imports, principally from Austria, consist of textile fabrics, also coal and iron, metals, machinery, colonial goods, timber, furniture etc.

MONEY—1 Lev.=100 Stotinki=1 Lev.=20 cents.

WEIGHTS AND MEASURES—Metrical system is in force.

*Law.*

Law of January 14th to 27th, 1904.

*Term.*

The right to the exclusive use of a trade mark extends for a term of 10 years.

At the expiration of this term, the registration can be renewed by periods of ten years.

In order to renew the registration a written application must be filed in the office within the last year. (Art. 32.)

The marks whose registration is cancelled, are declared free.

Toward the end of the tenth year the office shall notify the owner of a trade mark of the fact that the term of registration is about to expire.

However, the failure to notify the owner of a trade mark that the term for which the latter has been registered will soon expire, shall constitute no reason which might be offered as excuse for the non-renewal of the registration. (Articles 40-41.)

*What May Be Registered.*

Trade marks may consist of:

1. The styles or firm names of merchants and manufacturers.

2. Facsimile signature of merchants and manufacturers, as well as their monograms represented in special forms.

3. Arbitrary denominations not connected, in any way, with the nature of the article to which they are to be applied as trade marks.

4. Emblems, stamps (seals), vignettes, figures, reliefs, labels, wrappers or vessels, forms of product, of their wrappers or of their vessels (devices, expressions).

5. Letters or numerals combined in special forms, and

6. The name of a place in a town or village belonging to the person who employs it as the mark of his products etc. (Art. 1.)

All the inscriptions which surround a trade mark or which are enclosed therein, such as; (a) the style of a merchant, provided that said style does not itself form the trade mark; (b) the number, the volume, the measure, the weight, or the capacity of the goods; (c) the place or the country where the goods are manufactured; (d) the manner in which they are made or obtained; (e) the material of which they are made or produced, etc., shall constitute an integral part of the trade mark. (Art. 2.)

#### *Requirements.*

Power of attorney, legalized by consul or U. S. Department of State; certificate of home registry not legalized; eight facsimiles; one electro. (Form for application can be obtained from B. Singer's offices.)

#### *Mode of Application.*

The registration of marks is effected in a special Bureau under the Minister of Commerce, Section of Commerce and of Industry, called "Bureau of Industrial Property."

A trade mark shall be registered pursuant to an application to be forwarded to the office of industrial property, written in Bulgarian, and containing an exact indication of applicant's name, and first name, his occupation, and his place of residence, a clear and accurate description (in Bulgarian) of the trade mark with a list of those articles which are to be designated by such trade marks.

There must be joined to this application three copies of the trade mark to be registered, made on strong and good paper, a cliché for its reproduction which must not exceed 10x8x2.2 cm. and any documents which may be necessary.

In the Province, the application, accompanied by the necessary documents, may be remitted to the Prefect. The latter shall, after having indicated the date and the hour of its reception, address it, without delay, to the Minister of Commerce and of Agriculture.

Applications for the registration of foreign trade marks shall

be addressed directly to the Ministry of Commerce and Agriculture, Office of Industrial Property.

The applications for registration, as well as the applications for renewal, are deposited personally by the interested parties or by their attorneys. (Articles 8-13.)

The trade marks of foreigners who reside without the territory of the Principality shall be registered under the same conditions as those of residents of this country, provided that the commercial treaties, or else the laws of the land to which said foreigners belong or in which they have their principal place of business, admit of reciprocity in favor of Bulgarian subjects. (Art. 15.)

Apart from the formalities provided by the present law, the following requirements also must be complied with if those trade marks mentioned in the preceding article are to be registered:

1. The petition for registration must be accompanied by a certificate attesting that applicant has conformed to the conditions provided in the law of the country to which he belongs for the protection of the mark.

2. A declaration to the effect that applicant will recognize the competency of the courts of the country in all questions concerning the trade mark for which registration is desired; applicant shall also appoint some person residing in the principality to take charge of the trade marks, etc.

3. Trade marks of this kind are protected to the same extent and for the same term as in the country where they have been originally registered.

The decision granting or refusing the registration of a mark shall not be taken by the Bureau less than 5 days nor more than 15 days after the day when the demand has been deposited in conformity with Articles 11, 12 and 19.

If the mark deposited meets the conditions provided by the present law it is entered in the register ad hoc; and a certificate attesting this operation is delivered to the interested party.

The certificate of registration is provided with a stamp of three francs.

Registration is made by class, according to the nature of the product. Each registration bears two numbers—one general ordinal number and the other of classification.

Once the above mentioned certificate is delivered, the mark accompanied by the necessary indications, is published in the special bulletin forming a supplement to the Official Journal.

One of the copies of the registered mark is preserved, duly classed in the registers of the Bureau of Industrial Property; the second copy is preserved in the register of the Commercial and Industrial Museum, and placed at the disposition of the public; the third affixed upon the certificate of registration is remitted to the interested party.



At the time of the registration, the priority is attributed to him who is the first to file his application to the Prefecture of the Department or to the Bureau of Industrial Property.

When two or more applications are made simultaneously, whether at the Prefecture of the Department, or at the Bureau of Industrial Property, they follow the following order:

1. The applications of Bulgarian subjects or foreigners established in the principality.

2. Those of Bulgarians established abroad.

3. Those of foreigners living in those countries admitting reciprocity.

4. Those of foreigners of other countries.

A tax of 50 francs gold shall be paid for each first deposit and 40 francs gold for each renewal.

Independent of this tax the applications must be provided with a stamp of 50 centimes and the annexes, with those provided by provisions of the Stamp Law.

The registration taxes are paid to the public cashier, whose receipt shall be joined to the application.

In case of the refusal of registration, the tax paid will be refunded to the party and mention will be made on the receipt.

The taxes relative to a mark, that for one reason or another, shall be in the course of time suppressed, shall not be refunded. (Arts. 16 to 20 incl.)

#### *Refusal of Registration.*

The Office of Industrial Property shall refuse the registration of a trade mark in the following cases:

1. If the information required by the law does not appear in the application, or else if the necessary documents and annexes are not annexed to them.

2. If the Office finds that the three copies of the filed trade mark are not identical.

3. If the trade mark consists, entirely or partially, of signs, being contrary to good morals, to religion, or to public order.

4. If the trade mark consists of or if it contains a representation of the Sovereign or of the members of his family, or representations of foreign Sovereigns or members of their families, of the National arms or of their imitation, excepting those cases where it can be proved that applicant has obtained permission to use some coat of arms as a supplement to his trade mark.

5. If the mark consists in photographs or drawings representing men of State, without their assent, or that of their legal representatives, unless ten years have gone by since the day of their decease.

6. If the trade mark contains the emblem of the Red Cross,

or its imitation, or the words "Tcherven Krest" (the red cross) without the permission of this Society.

7. If it consists of or if it contains names or first names of persons or of societies which applicant has no right to use.

8. If it contains or consists of personal decorations which have nothing in common with the business for the products of which the mark is intended.

9. When the mark consists in or contains reproductions of medals, or else if it refers to diplomas or copies of testimonials that the depositor does not possess.

10. If the mark contains reproductions of medals and other decorations connected with applicant's business which are not shown in their real forms or are arranged so as to over-shadow the trade mark itself.

11. If the trade mark consists of or if it contains inscriptions which may give rise to the belief that the goods to which it is to be applied are of local origin.

12. Finally, if the mark is an infringement of a mark which has already been registered, or the registration of which has already been applied for by a duly filed application, or if it is an imitation of a previously registered trade mark.

The refusal to register a mark is communicated in writing to the interested party within the delay foreseen by Art. 17.

If the interested party is dissatisfied with the decision of the Bureau, he may enter appeal within the delay of one month from the day when the communication has been made to him, before the Tribunal of First Instance of the district where the demand has been deposited, which must pronounce definitely on the difference within a delay of one month.

After the expiration of the delay for appeal, the decision is considered as definite and enters into vigor.

The Tribunal shall, before the examination of the question, inquire the reasons that have led the Bureau to refuse registration.

The Bureau shall give in writing, or orally, its explanations to the Tribunal.

The decision of the Bureau relative to the refusal to register a mark can only be contested before the Tribunal.

After having been duly registered the trade mark shall become the exclusive property of the one who has applied for its registration, provided that it is not contested before the proper court within one year after the date of its registration. (Arts. 22 to 28 incl.)

#### *Assignments.*

The right of ownership to a trade mark can be assigned at the same time with the business to the goods of which it is applied as distinctive sign, if the respective parties agree mutually.

In order that such assignment may be valid against third parties it must be duly registered in the records of the Office of Industrial Property.

All assignments shall be effected through the Office of Industrial Property upon payment of a tax amounting to 30 francs gold. The assignment shall be exempt from said tax if the business is transferred together with the trade mark to the wife or the minors of the first owner of said trade mark. (Articles 35-38 incl.)

*Offenses and Penalties.*

He is considered guilty of infringing the present law and shall therefore be liable to the fines provided by this law—except where it is proved that he has acted without bad faith—any person who

- (a) imitates a mark of another;
- (b) uses a mark registered by another;
- (c) employs an imitation of a mark previously registered;
- (d) prepares stamps, clichés, machines and other special instruments intended for the imitation or counterfeiting of another mark;
- (e) places on their goods false commercial inscriptions;
- (f) employs the annotation "marque enregistree" or "M. E." as a mark or as its supplement;
- (g) has at disposal stamps, clichés, machines and other instruments intended for counterfeiting or imitating another mark;
- (h) employs as a mark or puts on the papers of his establishment without having the right, the arms of the principality, those of the Princely House, in any imitation whatever of those arms or the decorations of the State, the portraits of the Sovereign or members of his family;
- (i) employs without any authority the emblem of the "Red Cross," its imitation, or the denomination "Red Cross," or the portraits of statesmen or public men;
- (k) allows to figure upon his goods, upon the wrappers or upon the vessels, medals, diplomas, copies of testimonials, or their imitation, which he does not possess, or else represents them in colors which do not correspond with their appearance;
- (l) employs, in general, any kind of inscription or designation which may give rise to the belief that the goods are of local origin.

He is considered equally guilty of infraction of the present law who shall sell, exhibit or possess with intent to sell for some commercial or industrial purpose, goods or objects bearing one

of the signs or inscriptions enumerated in paragraphs b, c, e, f, h, i, k, l of the preceding article, unless he can prove:

(a) that, notwithstanding all the steps which he has taken in order to avoid any infringement of the law, it has been impossible for him to doubt at the time when the infringement occurred, the authenticity of the mark which has been used or of the commercial inscription which he has appropriated for himself;

(b) that, upon the request made by the party damaged or in his name, he (the infractor) has furnished all the information that it has been possible for him to furnish concerning the person who furnished him the goods or the objects in question;

(c) that he has acted without bad faith.

Any person who shall be deemed guilty of the offenses enumerated in Articles 43 and 44 shall be punished by a fine of from 500 to 4,000 francs or by imprisonment for a term of from three months to one year to which a fine of 3,000 francs may be added. Besides the penalties provided in the below mentioned article, the party to whom the damage has been caused shall also have the right to demand from the offender indemnity for the sustained damages and losses. Upon the request of the party who has suffered the damage, the court may decide that the sentence be published in the "Official Journal" for his account and, at least, in one of those papers having the largest circulation in the country.

In every case the court shall be competent to order the confiscation of any article, merchandise, or instrument and, in general, of whatever may have assisted in accomplishing the offenses.

The Tribunal which has condemned anyone by virtue of the present Law, may order the destruction of objects confiscated or their sale, to the profit of a benevolent institution.

The marks or inscriptions which have caused the confiscation of objects should be destroyed in the way that shall have been thought proper at the moment when the sale of the objects on which or on the package or receptacles of which they have been affixed has been pronounced.

Under the present law all suits in matters of infringement shall be tried in the courts of first instance (as first instance) pursuant to the rules of abbreviated procedure.

Under the present law action for infringement shall be instituted in pursuance of a request made by the interested party.

However, in case of the infringements enumerated in paragraphs d, e, g, k, l of Art. 43 and of those infringements named in the same paragraphs which appear again in Art. 44, actions

shall be instituted by the Office. The written testimony prepared for this purpose by the authorities shall then be immediately forwarded to the competent courts and the latter shall take all the necessary measures to confiscate, above all, those articles which have been the cause of the infringement.

In case of a repeated offense the penalty shall be doubled. If the crime is committed within a period of five years from the date of the first sentence, it shall be considered as constituting a repeated offense.

Salaried employes, servants and others, will not be prosecuted for infringing the present law who, in committing the infringement have acted for the account of their masters established in the principality.

The Department of Customs forbids the importation of goods which bear original or imitated trade marks of Bulgarian merchants or manufacturers or false commercial inscriptions.

Goods marked with the trade marks of merchants of this country may be admitted if they are intended for the owners of the trade marks and if the place, the town, or the country where the goods have been bought or manufactured is clearly and legibly indicated in an indelible manner. The Department of Customs shall confiscate and deliver to the judicial authorities, together with the written testimony required, the trade marks imported by third persons.

The Department of Customs shall act as organ of the Ministry of Commerce and Agriculture and it shall correspond directly with the latter in all matters affecting the present law. (Articles 43 to 52, incl.)

#### *Trade Marks on Imported Goods.*

The customs inspection provisions of this law are being very rigorously enforced. If the name of a firm of importers is marked upon the goods by means of labels, it is required that the place of manufacture thereof be also indicated, for failure of which the goods are confiscated. Similarly on each single article, such as a pen or a pencil, which is marked with the name of the firm, their location must be stamped. Wares which are sold by measure, like laces and embroidery, yarns and thread, must have upon the labels the name of the firm, the place of origin and the exact measurement of the piece. Should the customs officers find, upon strict examination of the wares, that the requirements are not exactly complied with, the goods are confiscated. In the case of liquors, each bottle must indicate, besides the place of origin, the contents and quality thereof, and if upon analysis it is found that the quality is incorrectly stated, the importer is subjected to a heavy fine and the goods are confiscated.

*Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The law does not protect buyers against goods bearing false indications of origin, but it prohibits the importation and sale or exposure for sale of goods bearing the imitation of a trade mark previously registered in Bulgaria. The Ministry of Commerce and Agriculture attends to the strict application of the law, and the Customs Authorities are charged with its execution. Representatives of foreign powers look after the protection of the interests of their own subjects, but their co-operation only consists in accelerating the legal procedure. The cost of prosecution is not likely to be very heavy. All goods imported must bear an indication of their origin.

Marking Goods: "Marque Enregistrée" or the abbreviation "M. E."

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## CANADA

Under this name are now united, in one government, all the British colonies on the North American continent, with the exception of Newfoundland. Their combined area is computed at 3,745,574 square miles. The population is seven and one-half millions.

**MINERAL PRODUCTS**—The mineral production of the Dominion of Canada is increasing yearly. The yield of silver heads the list, next comes gold, nickel, copper, lead. Coal is mined and petroleum is found. Other important items are asbestos, corundum, natural gas, phosphates, salt, mica, talc, graphite, pyrites, gypsum, mineral pigments, etc. It is anticipated that with the present activity the yield of gold, silver, nickel, copper and lead will rapidly assume larger proportions.

**COMMERCE**—The principal industry of the Dominion is undoubtedly agriculture, and cereals of all kinds, as well as dairy produce and cattle, are raised to an enormous extent, and the exports are very considerable; second to these are the timber trade, the fisheries and the fur trade.

**MONEY**—Canada (Dominion of) 1 dollar (100 cents)=United States \$1.00.

**WEIGHTS AND MEASURES**—Same as Great Britain, with the exception that the cwt. equals 100 lbs. and the ton equals 2,000 lbs. avoirdupois.

### *Law.*

Act, R. S., c. 63, s. 1.

### *Duration.*

A general trade mark once registered and destined to be the sign in trade of the proprietor thereof shall endure without limitation. R. S., c. 63, s. 14. (Sec. 16.)

A specific trade mark, when registered, shall endure for the term of twenty-five years, but may be renewed before the expiration of the said term by the proprietor thereof, or by his legal representative, for another term of twenty-five years, and so on from time to time; but every such renewal shall be registered before the expiration of the current term of twenty-five years. R. S., c. 63, s. 14. (Sec. 17.)

*What May Be Registered.*

All marks, names, labels, brands, packages or other business devices, which are adopted for use by any person in his trade, business, occupation or calling, for the purpose of distinguishing any manufacture, product or article of any description manufactured, produced, compounded, packed or offered for sale by him, applied in any manner whatever either to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatsoever containing the same, shall, for the purposes of this Act, be considered and known as trade marks. R. S., c. 63, s. 3. (Sec. 5.)

The Minister may refuse to register any trade mark (*a*) if he is not satisfied that the applicant is undoubtedly entitled to the exclusive use of such trade mark; (*b*) if the trade mark proposed for registration is identical with or resembles a trade mark already registered; (*c*) if it appears that the trade mark is calculated to deceive or mislead the public; (*d*) if the trade mark contains any immorality or scandalous figure; (*e*) if the so-called trade mark does not contain the essentials necessary to constitute a trade mark, properly speaking. 54-55 V., c. 35, s. 1. (Sec. 11.)

The first user is entitled to register, and he alone can effect a valid registration.

As a general proposition a proper name cannot be registered in Canada as a trade mark unless it possesses distinctive form, but whenever a proper name has been used as a trade mark for an extended period of time, and by such use has acquired a secondary or trade mark meaning, it may be registered by virtue of an order from the exchequer court.

To obtain such an order it is necessary to advertise the trade mark for some four weeks, to serve notice on the Minister of Agriculture according to law, and to comply in all respects with the usual court procedure. It is understood that under the present practice the exchequer court will order registration whenever a *prima facie* case is presented.

The Canadian system of trade mark law is in a sense a compromise between the English common law, which recognizes the superior rights of a first user of a mark, and the principle of title acquired through registration, in accordance with the stat-

ute. A registration is provided for trade marks under the Canadian law, in favor of "The proprietor of a trade mark," who, after registering the mark, "shall have the exclusive right to use the trade mark to designate articles manufactured or sold by him." (Sec. 13.)

For the definition of the proprietor of a trade mark under this section, it appears to be necessary to resort to the common law. The courts construe this to mean, he who has first used the mark; that is to say, only the first user is entitled to register, and he alone can effect a valid registration. So, where a mark has been registered in favor of one person, it is possible for another to show prior use of the mark, and upon such a showing it is proper to have the entry of registration rectified, eliminating the claim of the registrant to exclusive use of the mark, even though the mark has not been registered by the first user. (*De Kuyper vs. Van Dulken*, 24 Can. Sup. Ct. Rep., 114.)

From this it will be seen that a certificate of registration is merely prima facie evidence of the registrant's title to the mark, such title being subject to attack with proof of paramount right in some one else, acquired by priority of use.

The provisions as to what may be registered as a trade mark are purely negative, forbidding registration to any mark "that does not contain the essentials necessary to constitute a trade mark, properly speaking." (Sec. 11.) Thus for a definition of what, properly speaking, may constitute a trade mark we must again revert to the English common law. Only a mark or symbol that will distinguish the article upon which it is placed from the like goods manufactured or sold by another, can be properly registered under the Act. No property can be acquired in a mark recognized in a particular trade, as designating quality, nor in any word that is otherwise merely descriptive and not distinctive. (*Partlo vs. Todd*, 17 Can. Sup. Ct. Rep., 196, and *King vs. Cruttenden*, 10 Ont. Law Rep., 80.)

Where a descriptive term has been registered through the inadvertence of the Registrar or otherwise, this registration does not give to the registrant any right to the exclusive use of the mark registered, and, in a suit for infringement of an alleged trade mark registered under the statute, the defendant may show that the mark was not properly registered as a trade mark, by reason of its descriptive character, or its invalidity otherwise as a trade mark. (*Partlo vs. Todd*, 17 Can. Sup. Ct. Rep., 196.)

#### *How Registration May Be Effected.*

The proprietor of a trade mark may, on forwarding to the Minister a drawing and description in duplicate of such trade mark, and a declaration that the same was not in use to his knowl-



edge by any other person than himself at the time of his adoption thereof, together with the fee required by this Act in that behalf, and on otherwise complying with the provisions of this Act, in relation to trade marks and with the rules and regulations made thereunder, have such trade mark registered for his own exclusive use. (Sec. 13.)

Thereafter such proprietor shall have the exclusive right to use the trade mark to designate articles manufactured or sold by him. R. S., c. 63, ss. 3, 5, 8 and 13. (Sec. 13.)

Under the law as it stands at the present time, the exchequer court has been given jurisdiction over applications for trade mark registration by appeal from the Registrar of trade marks, over applications to rectify the entries upon the register, and over actions for injunction and damages. This legislation does not in any way alter, enlarge, or modify the effect of registration as it before existed. The registration may still be attacked collaterally, by showing, in any case where its validity comes in question, that the mark was not properly registered. (*Provident Chemical Works vs. Canadian Chemical Mfg. Co.*, 4 Ont. Law Rep., 545.)

#### *Fees.*

The following shall be the fees in respect to registration under this Act which shall be paid to the Minister in advance, that is to say:

On every application to register a general trade mark, including certificate, \$30.00.

On every application to register a specific trade mark, including certificate, \$25.00.

On every application for the renewal of the registration of a specific trade mark, including certificate, \$20.00.

#### *Requirements.*

Declaration in duplicate; description of mark, stating whether it is intended for use as a general or specific one; four copies of the mark.

#### *Unlawful Use of Trade Marks.*

Every other person other than the proprietor of any trade mark who, with intent to deceive and to induce any person to believe that any article of any description whatsoever, was manufactured, produced, compounded, packed or sold by the proprietor of such trade mark (a) marks any such article with any trade mark registered under the provisions of this act, or with any part of such trade mark, whether by applying such trade mark or any part

thereof to the article itself or to any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such trade mark; or (b) knowingly sells or offers for sale any such article marked with such trade mark or with any part thereof; is guilty of an indictable offense and liable for each offense to a fine not exceeding one hundred dollars and not less than twenty dollars.

Such fine shall be paid to the proprietor of such trade mark, together with the costs incurred in enforcing and recovering the same.

Every complaint under this section shall be made by the proprietor of such trade mark, or by some one acting on his behalf and thereunto duly authorized. R. S., c. 63, s. 17. (Sec. 21.)

In criminal prosecution, for infringement of a registered trade mark, it is a good defense that the mark registered was not properly so registered because descriptive. (King vs. Cruttenden, 10 Ont. Law Rep., 80.)

In practice, the registrar rejects applications for words that are recognized as descriptive and indicative of grade, quality or other characteristics of the goods, geographical terms and proper names, except when the last are presented in some particular and distinctive fashion. These are the marks that have been commonly recognized for many years, in English and American law, as not properly the subject of trade mark protection. While the trade mark statutes, both of Great Britain and the United States, expressly exclude from registration marks that are objectionable on the above grounds, the same tests of registrability have been adopted by the registrar in Canada to govern his actions, under the more general provisions of the Canadian law.

The registered proprietor of a trade mark may maintain an action under the statute, for any fraudulent use or imitation of his trade mark (Sec. 19, and the law refuses any action for infringement, without such registration. (Sec. 20.)

The unauthorized use, by any one other than the proprietor, of any registered mark, with intent to deceive, or of any part of such mark, is a penal offense, punished by a fine of from twenty to one hundred dollars to be paid to the proprietor of the mark. (Sec. 21.) Although no suit for infringement of trade mark can be instituted, except after registration thereof under the statute, nevertheless the common law doctrine of unfair competition is fully recognized in the Canadian law. Thus the Canadian supreme court has quoted with approval, the rule laid down by the British house of lords, that no one has the right to sell his goods as the goods of a rival trader, and cannot, therefore, use any mark, whereby he will induce purchasers to believe that the

goods he sells are the goods of another. It applied the principle to restrain the use of the name "Boston" upon rubber boots and shoes, in a way to cause it to be supposed that they were the goods of the company first to make use of that name. (*Boston Rubber Shoe Co. vs. Boston Rubber Co. of Montreal*, 32 Can. Sup. Ct. Rep., 315.)

The Ontario court of appeals has recognized the same principle while refusing to apply it in the case before the court, upon the ground that the descriptive term there under discussion had not acquired a secondary meaning as indicative of the goods of the plaintiff. (*Gillett vs. Lumsden*, 8 Ont. Law Rep. 168.)

The principle was further illustrated, in a case where no registered trade mark was involved, and the name in question was purely a geographical one. From the year 1839, the water of a certain spring at Caledonia, Canada, had been known as Caledonia water, and since 1876 the term had indicated the water of the plaintiff, who was the owner of the spring. Another party began to put out on the market the product of artesian wells driven in the same locality, under the name of "Water from New Springs at Caledonia." An action was brought to restrain this use of the name Caledonia, on grounds of unfair competition, but, there being no imitation of label or makeup, it was held that the defendant had sufficiently distinguished his article from that of the plaintiff, and that no cause of action existed. (*Grand Hotel Company of Caledonia vs. Wilson*, 5 Ont. Law Rep., 141.)

A Canadian case involved the right to the use of the word "Milwaukee" as a designation for beer manufactured in Montreal. The action was instituted by a Milwaukee brewer and was unsuccessful; the court practically held that the plaintiff had no standing, inasmuch as the term was generic and the plaintiff was not the only person in the beer business in Milwaukee, but denied the application also upon the ground that there was no deception, inasmuch as the place of manufacture was prominently displayed in connection with the word objected to. (*Pabst Brewing Co. vs. Eckers*, 21 Quebec Supreme Court, 545.)

#### *Assignment.*

Every trade mark registered in the office of the minister shall be assignable in law.

On the assignment being produced, and the fee by this Act prescribed therefor being paid, the Minister shall cause the name of the assignee, with the date of assignment and such other details as he sees fit, to be entered in the margin of the register of trade marks on the folio where such trade mark is registered. (R. S., c. 63, s. 16.)

## TRADE MARKS.—GOLD AND SILVER WARE

7-8 EDWARD VII.

Chap. 30.

*An Act respecting the sale and marking of manufactures of Gold and Silver, and Gold and Silver Plated Ware. Assented to 20th July, 1908.*

*Gold and Silver.*

This section applies only to articles composed, wholly or partly, of gold, silver, or any alloy of gold or silver, which are made or sold in Canada by or brought into Canada by dealers.

If such an article bears any mark it must have applied to it the following marks:

- (a) A mark or marks truly and correctly indicating in the manner required by this Act, the quality of the gold, silver or alloy, hereinafter called a quality mark; and also
- (b) A trade mark or trade marks registered in accordance with The Trade Mark and Design Act.

If the article bears—

- (a) Hall marks lawfully applied according to the laws of the United Kingdom of Great Britain and Ireland; or
- (b) Marks applied by the Government, or under the laws of any foreign country, to indicate the quality of the gold, silver or alloy; and—
- (c) In both cases, if all the other provisions of this Act have been complied with as regards the article; it need not have applied to it any of the marks mentioned in subsection 2 of this section.

If the article bears a trade mark registered in accordance with The Trade Mark and Design Act and a quality mark, or if it bears any of the marks defined by paragraphs (a) and (b) of subsection 3 of this section, it may also have applied to it any or all of the following marks—

- (a) Numerals intended to indicate pattern;
  - (b) The name or initials of a dealer;
  - (c) Any other mark not calculated to mislead or deceive if such marks are not incorporated with any quality mark.
- (Art. 9.)

*Gold.*

It shall not be lawful for a dealer to make or to sell, or to bring into Canada, any article purporting to be wholly or partially composed of gold or of any alloy of gold, if the article

has applied thereto any mark indicating or purporting or intended to indicate the gold in the article to be of less than nine karats in fineness, or consisting of or including the words Gold, Solid Gold, Pure Gold, U. S. Assay, or other words purporting to describe the gold or alloy of which the article is composed. (Art. 10.)

As respects articles composed, in whole or in part, of gold or of any alloy of gold—

(a) Marks indicating the quality of gold or alloy of gold used in the construction of the article shall state the fineness of the gold in karats, thus: 12K, 18K, or as the case may be;

(b) The number of karats so stated shall bear the same proportion to twenty-four karats as the weight of the gold in the metal or alloy bears to the gross weight thereof; that is to say, 18K shall be deemed to mean that in the composition there are eighteen parts of pure gold and six parts of other ingredients; and—

(c) The actual fineness of the gold or alloy of gold of which the article is composed shall not be less than the said proportion—

(i) By more than one-half of a karat, if solder is used, or

(ii) By more than one-quarter of a karat, if solder is not used. (Art. 11.)

### *Silver.*

It shall not be lawful for a dealer to make or to sell or to bring into Canada, any article purporting to be wholly or partly composed of silver or of any alloy of silver, which has applied thereto any mark indicating, or purporting or intended to indicate, that the metal or alloy of which such article is composed is of higher quality than it really is.

The marks Silver, Sterling or Sterling Silver, Coin or Coin Silver, or any colourable imitation thereof, or any other mark intended to suggest such a quality, shall not be applied to any such article or part thereof, if the metal or alloy of which such article or part is composed contains silver in less proportion than nine hundred and twenty-five parts of pure silver in every one thousand parts of such metal or alloy.

As respects articles composed in whole or in part of any alloy of silver of a lower quality than sterling silver—

(a) Any marks indicating the quality of silver or alloy of silver used in such articles shall state the fineness of the silver in decimals, thus: .800, .900, or as the case may be;

(b) The decimal quality mark, so stated, shall bear the same proportion to unity as the weight of the silver in the metal or alloy bears to the gross weight thereof; that is to

say, .900 shall be deemed to mean that in the composition there are 900 parts of pure silver and 100 parts of other ingredients; and—

(c) The actual fineness of the silver or alloy of silver of which the article is composed shall not be less than the said proportion—

(i) By more than 25 parts in 1,000 when solder is used; or—

(ii) By more than 10 parts in 1,000 when solder is not used. (Art. 12.)

### *Gold and Silver Plated Ware.*

In the case of articles which are made in whole or in part of an inferior metal having deposited or plated thereon, or brazed or otherwise affixed thereto, a plating, covering, or sheet composed of gold or of silver, or of an alloy of gold or of silver, such articles being known in the trade as rolled gold plate, gold filled, gold plate, silver plate, silver filled, gold electroplate, silver electroplate, or by any similar designation, and in the case of articles of like nature brought under the provisions of this section by regulation made by the Governor in Council under the authority of this Act, it shall not be lawful for a dealer to make or to sell, or to bring into Canada any such article, if to such article or any part thereof there is applied—

(a) A mark indicating otherwise than truly that the article or part thereof is made of rolled gold plate, gold filled, gold plate, silver plate, silver filled, or gold or silver electroplate, or any similar material; or—

(b) A mark indicating, otherwise than truly and correctly, the fineness and the actual weight of gold or silver, contained in the article or part thereof, or the proportion of gold or of silver to the gross weight of the article or of such part, at the time the article is sold or delivered by the maker; or—

(c) Unless where a mark indicating any such particulars is applied to such article, or part thereof, there is also applied to it a trade mark registered in accordance with The Trade Mark and Design Act.

The actual weight or the proportion of gold, or of silver, in any such article or part thereof, shall not be less than the actual weight or proportion indicated by any such mark applied thereto, by more than ten per centum of the actual weight or proportion so indicated.

The Governor in Council may, from time to time, make such regulations as to him seem necessary for declaring articles to be subject to or exempt from the provisions of this section. (Art. 13.)

*Electroplated Ware.*

It shall not be lawful for a dealer to make or to sell, or to bring into Canada, any article of silver or gold electroplate to which is applied a mark indicating otherwise than truly and correctly the metal on which the plating is deposited, the metal of which the deposit is composed, and the grade, quality, or description, as known to the trade, of the plating. (Art. 14.)

*Marks on Plated Ware.*

The following marks when applied to articles of gold or silver plate or electroplate shall be taken to mean respectively as follows: R. P., rolled plate; E. P., silver electroplate; G. F., gold filled; Gilt, gold electroplate; N. S., nickel silver; G. S., German silver; B. M., Britannia metal; W. M., white metal; and the Governor in Council may, from time to time, designate other marks for such application and define their signification. (Art. 15.)

*Offenses and Penalties.*

Every one is guilty of an indictable offense, who, being a dealer within the meaning of this Act,—

(a) contravenes any provision of sections 9, 10, 11, 12, 13, or 14 of this Act; or,

(b) Makes use of any printed or written matter, or advertisement, or applies any mark to any article of any kind referred to in section 13 or in section 14 of this Act or to any part of such article, guaranteeing or purporting to guarantee by such matter, advertisement or mark, that the gold or silver on or in such article or such part thereof will wear or last for any specified time. (Art. 16.)

Every dealer who is convicted of an offense under this Act, or of an attempt to commit any such offense shall be liable to a fine not exceeding one hundred dollars for each article or part of an article in respect of which the conviction is had; and after the conviction every such article shall be so broken and defaced as to be unfit for sale otherwise than as metal. (Art. 17.)

Marking Goods: Trade mark Registered.

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## CAPE PROVINCE

The coast is indented by several bays, namely, Table Bay, Flase Bay, Mossel and Algoa Bays. A considerable coast trade is carried on with Hondeklip, Walfish and other bays on the west coast; and Mossel Bay, Port Elizabeth, Port Alfred, East London and Natal on the east coast.

The total population of the Cape of Good Hope in April, 1904, was 2,409,804. Of this 579,741 were of European descent and about 1,500,000 aborigines. The area is 276,995 square miles.

COMMERCE—The principal industries consist in the mining of coal, copper, gold, diamonds etc., the production of wine and the raising of cattle, ostriches etc. The principal articles of export are wool, angora hair, sheep and goat skin, ostrich feathers, diamonds, gold, copper, etc.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

#### *Duration.*

Fourteen years, renewable for similar periods.

#### *Requirements.*

Application; declaration legalized by British Consul; power of attorney, legalized by British Consul; six copies of mark; one electrotype.

#### *What May Be Registered.*

Act 12 of 1895 prescribed that a trade mark must henceforth consist of or contain at least one of the following essential particulars: (a) A name of an individual or firm printed, impressed, or woven in some particular manner; or (b) a written signature, or a copy of a written signature, of the individuals or firm applying for registration thereof as a trade mark; or (c) a distinctive device, mark, or brand, heading, label or ticket; or (d) an invented word or invented words; (e) a word or words having no reference to the character or quality of the goods, and not being a geographical name. And there may be added to any one or more of these particulars any letters, words, or figures, or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of his trade mark, and must disclaim in his application any right to the exclusive use of the added matter.

Provided as follows:

(1) A person need not under this section disclaim his own name or the foreign equivalent thereof; or his place of business, but no entry of such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

(2) Any special and distinctive word or words, letter, figure, or combination of letters or figures or of letters and figures used as a trade mark before the eighth day of August, one thousand eight hundred and seventy-seven, may be registered as a trade mark under the said Act.



*Documents Required.*

In order to obtain registration of a trade mark an application accompanied by a solemn declaration, must be filed with the Registrar of Deeds in Cape Town, and both must be written on durable paper of foolscap size, having on the left hand side a margin of not less than two inches.

Where the applicant is a firm the application and declaration must be signed by a partner of the firm, who should add the words "a member of the firm" after his signature, and, in the case of a company, by the Secretary or other Principal Officer, adding, after his signature, "for the Company."

Care should be taken that the declaration is executed in terms of the rule in that behalf provided, which runs thus:

The declaration, if made within the Province, shall be attested by a Justice of the Peace; if made elsewhere within His Majesty's Dominions, by a Justice of the Peace or Mayor; and if made out of His Majesty's Dominions, by a British Consular Officer, or by a Magistrate or Mayor (whose signature shall be authenticated by such Consular Officer, or by the Consular Representative, in London, of the Country in which the declaration was made) or by a Commissioner of the Supreme Court of the Cape of Good Hope appointed to administer oaths outside this Province or by such other officer as shall by law be authorized to administer an oath, provided that the signatures of the officers attesting declarations made out of His Majesty's Dominions shall in every case be authenticated in the manner prescribed above.

The application and declaration *must* be signed by the applicant and *cannot* be signed by an agent under Power of Attorney.

Every application must be accompanied by six representations of the mark.

*Procedure.*

No mark will be accepted for registration unless consisting of or containing one of the above essentials.

No mark is registered for what such registration may be worth.

Special attention is called to the following points of practice in the Cape Province Trade Mark Registry Office:

(a) Where a mark is sought to be registered in respect of several different articles and the name of one of the articles only appears upon the printed copy of the mark attached to the application, the Registrar will only register the mark in respect of the article so mentioned unless the application contains a statement to the effect that the name on the mark will be varied from

time to time by substituting the name of the article to which the mark is actually to be applied.

(b) Where a word is sought to be registered as an invented word, part of which consists of a word in common use, the Registrar will not accept the word even if a disclaimer is made to that portion of the word in common use.

*If the application is rejected by the Registrar of Deeds by reason of an omission to comply with the rules or any one of them, the application cannot be amended by the agent, and if the application is renewed fresh papers must be prepared with the defect rectified and refiled and the application renewed ab initio.*

The period required to effect the registration of a trade mark and obtain the Certificate is about seven weeks from the date of the receipt of the papers.

Where registration of a trade mark has not been or shall not be completed within three months from the date upon which the application is received by the Registrar of Deeds, by reason of default on the part of the applicant, the application shall be deemed to be abandoned, but should this happen the applicant can always file a fresh application, in which event a second application fee will have to be paid.

The Registrar has power to grant an extension of time within which to complete an application.

The power is only exercised when the Registrar is satisfied that there is a reasonable excuse for not completing the application within the time limit.

Business with the Deeds Registry Office must be conducted in person or through an agent, and *not* by correspondence.

#### *Assignments.*

The right to the use of a trade mark is assignable by an instrument in writing. No special form is required. Special attention is drawn to the fact that the Registrar requires proof that the good will of the business has been assigned together with the mark.

The application and declaration shall be signed and attested as provided in connection with applications for the registration of trade marks; and the applicant shall furnish such proof of his title to the mark claimed and of the existence of the good will of the business concerned in the particular goods or classes of goods for which the mark has been registered, as the Registrar of Deeds may require for his satisfaction. The claimant shall also produce the original certificate of registration for endorsement of such assignment or transmission, and if it has been lost or destroyed a declaration setting forth fully the circumstances of such loss or destruction, attested in the manner described above, shall be lodged.

*Renewals.*

Trade marks can be registered in perpetuity subject to the payment of a renewal fee before the expiration of every fourteen years.

The renewal fee will not be accepted earlier than within three months of the expiration of each fourteen years.

The Registrar may accept payment of the renewal fee within three months after expiration of the period of protection, with the additional prescribed fee of ten shillings, and may, should the mark be removed from the Register for non-payment of the renewal fee, restore the same on payment of the prescribed additional fee if satisfied that it is just so to do.

The certificate of registration should be sent for endorsement of payment of the renewal fee. When this course is not convenient the fee may be paid and the certificate subsequently endorsed upon payment of a further fee of three shillings.

*Appeal.*

An appeal against the Registrar's decision may be made to the Supreme Court of the Province.

*Classification of Goods.*

CLASS 1. Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.

CLASS 2. Chemical substances used for agricultural, horticultural, veterinary and sanitary purposes.

CLASS 3. Chemical substances prepared for use in medicine and pharmacy.

CLASS 4. Raw or partly prepared vegetable, animal, and mineral substances, used in manufactures, not included in other classes.

CLASS 5. Unwrought and partly wrought metals used in manufacture.

CLASS 6. Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines included in Class 7.

CLASS 7. Agricultural and horticultural machinery, and parts of such machinery.

CLASS 8. Philosophical instruments, scientific instruments, and apparatus for useful purposes. Instruments and apparatus for teaching.

CLASS 9. Musical instruments.

CLASS 10. Horological instruments.

CLASS 11. Instruments, apparatus, and contrivances, not med-

icated, for surgical or curative purposes, or in relation to the health of men or animals.

CLASS 12. Cutlery and edge tools.

CLASS 13. Metal goods not included in other classes.

CLASS 14. Goods of precious metals (including aluminum, nickel, Britannia metal, etc.), and jewelry and imitations of such goods and jewelry.

CLASS 15. Glass.

CLASS 16. Porcelain and earthenware.

CLASS 17. Manufactures from mineral and other substances for building or decoration.

CLASS 18. Engineering, architectural, and building contrivances.

CLASS 19. Arms, ammunition, and stores not included in Class 20.

CLASS 20. Explosive substances.

CLASS 21. Naval architectural contrivances and naval equipments not included in Classes 19 and 20.

CLASS 22. Carriages.

CLASS 23. Cotton yarn and thread.

CLASS 24. Cotton piece goods of all kinds.

CLASS 25. Cotton goods not included in Classes 23, 24 or 38.

CLASS 26. Linen and hemp yarn and thread.

CLASS 27. Linen and hemp piece goods.

CLASS 28. Linen and hemp goods not included in Classes 26, 27 or 50.

CLASS 29. Jute yarns and tissues, and other articles made of jute not included in Class 50.

CLASS 30. Silk, spun, thrown, or sewing.

CLASS 31. Silk piece goods.

CLASS 32. Other silk goods not included in Classes 30 and 31.

CLASS 33. Yarns of wool, worsted, or hair.

CLASS 34. Cloths and stuffs of wool, worsted or hair.

CLASS 35. Woolen and worsted and hair goods not included in Classes 33 and 34.

CLASS 36. Carpets, floorcloth and oilcloth.

CLASS 37. Leather, skins unwrought and wrought, and articles made of leather not included in other classes.

CLASS 38. Articles of clothing.

CLASS 39. Paper (except paperhangings), stationery and book-binding.

CLASS 40. Goods manufactured from india rubber and gutta percha not included in other classes.

CLASS 41. Furniture and upholstery.

CLASS 42. Substances used as food, or as ingredients in food.

CLASS 43. Fermented liquors and spirits.

CLASS 44. Minerals and aerated waters, natural and artificial, including ginger beer.

CLASS 45. Tobacco, whether manufactured or unmanufactured.

CLASS 46. Seeds for agricultural and horticultural purposes.

CLASS 47. Candles, common soap, detergents; illuminating, heating, or lubricating oils; matches, and starch, blue, and other preparations for laundry purposes.

CLASS 48. Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).

CLASS 49. Games of all kinds and sporting articles, not included in other classes.

CLASS 50. Miscellaneous, including:

(1) Goods manufactured from ivory, bone, or wood, not included in other classes.

(2) Goods manufactured from straw or grass, not included in other classes.

(3) Goods manufactured from animal and vegetable substances, not included in other classes.

(4) Tobacco pipes.

(5) Umbrellas, walking sticks, brushes and combs.

(6) Furniture cream, plate powder.

(7) Tarpaulins, tents; rick cloths, rope, twine.

(8) Buttons of all kinds, other than of precious metal or imitations thereof.

(9) Packing and hose of all kinds. Goods not included in the foregoing class.

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## CENTRAL AFRICA PROTECTORATE

The Protectorate of Nyasaland lies along the southern and western shores of Lake Nyasa and extends towards the Zambesi. The area is 43,608 square miles, and it is divided into thirteen administrative districts. The population in 1909 was estimated to be 922,313 natives, 435 Asiatics and 587 Europeans.

British Central Africa is divided into the Nyasaland Protectorate and the British Sphere of Influence beyond. The first-named is administered by a Governor and Commander-in-Chief, under the Imperial Government (Colonial Office), the last-named by the British South Africa Chartered Company.

The chief products are cotton, coffee, tobacco, tea, chillies and rubber, which are largely exported; rice and other subtropical products are also grown.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

### *Registration. Substantive and Adjective Law.*

1. This ordinance may be cited as "The Patents, Designs, and Trade Marks Ordinance, 1903.

2. The Registrar of the British Central Africa Protectorate shall be Registrar of Patents, Designs, and Trade Marks within the Protectorate, and shall for that purpose have all the powers and authority of the Comptroller-General of Patents in England under the Patents, Designs, and Trade Marks Act, 1883 to 1901, or under any statutes substituted for the said statutes.

(a) Subject to the other provisions of this Ordinance, the procedure in obtaining or opposing or extending the period of or amending or revoking the grant of a patent and in registering or opposing or amending the registration of a design or a trade mark shall be that in force in England under the Patents, Designs, and Trade Marks Acts, 1883 to 1901, or under any statute amending or substituted for the said statutes.

(b) The definition of and the law relating to the subject-matter of patents, designs, and trade marks and the definition of and the law relating to 'true and first inventors,' patentees, grantees, assignees, and licencees shall be those in force in England as aforesaid.

(c) The legal remedies of any person claiming an interest in any patent, design, or trade mark shall be those in force in England as aforesaid, except that in the aforesaid statutes, 'The Court' shall mean His Majesty's High Court of British Central Africa; the 'Comptroller' shall mean the Registrar of British Central Africa Protectorate; the 'Board of Trade' shall mean the Commissioner; 'Law Officer' shall mean the Crown Prosecutor.

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## CEYLON

Ceylon is an island, situated south-east of the peninsula of India, between latitudes  $5^{\circ} 59'$  and  $9^{\circ} 51'$  north, and longitudes  $79^{\circ} 41'$  and  $81^{\circ} 54'$  east. Area 25,332 square miles, or 16,000,000 acres. Its greatest length is from north to south, 266 miles, and greatest width from east to west, 140 miles. The population in December, 1911, was estimated to be 4,210,549.

COMMERCE—The exports consist principally of tea, also rubber, cocoa (from cacao or chocolate tree), cinnamon, copperah or dried coconut pulp, desiccated coconut, coconut oil, coir, arrack, coffee, cinchona bark, cardamoms, tobacco, citronella and other essential oils, hides, horns, ebony and other fine timbers. The imports consist principally of apparel and haberdashery, coal, cotton and woolen goods, machinery, malt liquor, metals, spirits, stationery etc.

MONEY—Ceylon 1 rupee (100 cents.)=32 cents.

WEIGHTS AND MEASURES—Same as Great Britain.

*Laws.*

Merchandise Marks Ordinance of 1888. Trade Mark Ordinance of 1888. Amended Ordinance No. 4 of 1890; No. 6 of 1904 and No. 9 of 1906.

*Term.*

Fourteen years; renewable.

*Application for Registration.*

An application for registration of a trade mark, if made by any firm or partnership, may be signed by some one or more members of such firm or partnership, as the case may be.

If the application be made by a body corporate, it may be signed by the secretary or other principal officer of such body corporate. (Art. 6.)

*Mode of Application.*

Any person who has registered a trade mark in Great Britain shall be entitled to registration of his trade mark under this Ordinance in priority to other applicants; and such registration shall have the same date as the date of the application for registration in Great Britain;

Provided that his application is made within four months from his applying for protection in Great Britain;

Provided that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in this colony;

The use in this colony during the period aforesaid of the trade mark shall not invalidate the registration of the trade mark;

The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Ordinance;

Provided that any trade mark, the registration of which has been duly applied for in Great Britain may be registered under this Ordinance. (Art. 41.)

An application for registration and all other communications between the applicant and the Registrar-General may be made by or through an agent duly authorized to the satisfaction of the Registrar-General.

On receipt of the application the Registrar-General shall furnish the applicant with an acknowledgment thereof.

When application is made to register a trade mark which was used by the applicant or his predecessors in business before the coming into operation of said Ordinance, the application shall contain a statement of the time during which, and of the per-

sons by whom, it has been so used in respect of the goods mentioned in the application.

Subject to any other directions that may be given by the Registrar-General, all applications, notices, counterstatements, representations of marks, papers having representations affixed, or other documents required by the said Ordinance or by these rules to be left with or sent to the Registrar-General shall be upon foolscap paper of a size of 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half.

Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the Registrar-General may think most convenient. The Registrar-General may, if dissatisfied with the representation of a trade mark, require a fresh representation, either before he proceeds with the application or before he registers the trade mark. The Registrar-General may also, in exceptional cases, deposit in the Registrar-General's office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in section 7 of the said Ordinance, a representation of each trade mark of the series shall be made or affixed upon the form of application, and also upon each of the separate half sheets of paper aforesaid.

#### *Advertisements.*

Every application shall be advertised by the Colonial Secretary in the Government Gazette and in one or more of the local newspapers, during such time and in such manner as the Colonial Secretary may direct.

Before advertising in the Government Gazette and in one or more of the local newspapers, the Colonial Secretary may require the applicant to pay the costs of advertising in such local newspaper or newspapers as the Colonial Secretary may elect.

#### *Opposition to Registration.*

The notice required by Sec. 11 of the said Ordinance to be given to the Registrar-General shall be given by delivering at or sending to the Registrar-General's office a copy of the application or other initiatory proceeding, bearing an endorsement by the applicant or his proctor that notice of the application or other initiatory proceeding has been served on the opponent.

As soon as may be after the expiration of two months from



the date of the first advertisement of the application, the Registrar-General shall, subject to any application or other proceedings under Section 11 of the said Ordinance and the determination of the court thereon, if he is satisfied that the applicant is entitled to registration, and on payment of the prescribed fee, enter the name, address, and description of the applicant in the Register of Trade Marks as the registered proprietor of the trade mark in respect of the particular goods or classes of goods described in his application.

#### *Fees.*

On application, Rs. 2.50; on completion, Rs. 10. For each additional class, Rs. 2.50. Renewal fees Rs. 10.

#### *Assignment.*

A trade mark when registered shall be assigned and transmitted only in connection with the good-will of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that good-will. (Art. 12.)

#### *Offenses.*

If any person makes or causes to be made a false entry in the register kept under this Ordinance, or a writing falsely purporting to be a copy of an entry in any such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing knowing the entry or writing to be false, he shall be guilty of an offense, and punished with simple or rigorous imprisonment for a term not exceeding seven years.

Any person who describes any trade mark applied to any article sold by him as registered, which is not so, shall be guilty of an offense, and liable on conviction to a fine not exceeding fifty rupees. A person shall be deemed, for the purposes of this section, to describe that a trade mark is registered, if he sells the article with the word "registered" or any word or words expressing or implying that registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connection with any trade, business, calling or profession the Royal Arms or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be guilty of an offense, and liable on conviction to a fine not exceeding one hundred rupees. (Art. 42.)

All offenses under this Ordinance are hereby declared to be "non-cognizable" and "bailable," within the meaning of those terms as defined in section 3 of "The Criminal Procedure Code, 1883." (Art. 43.)

*Classification.*

There are fifty classes; same as British.

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## CHANNEL ISLANDS

The islands of Jersey (which is the largest and most important) and Guernsey and Alderney are termed by the Customs the Channel Islands, having a separate jurisdiction and freedom from Customs dues. The population of these islands is about 98,000.

The imports are coals and all articles of food from England and France. The principal articles of export are market garden and farm produce, principal among these being potatoes; grapes are also extensively grown and exported. The islands are also celebrated for their well known breed of cattle, which are largely exported. About 300,000 tons of broken stones are exported annually, principally to London.

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## CHANNEL ISLANDS

(Jersey and Guernsey.)

Trade marks may be protected in Jersey and Guernsey by entering a certificate of registration in Great Britain in the rolls of the royal courts.

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## CHILE

The Republic of Chile is the most southerly state on the west side of the continent of South America, extending 2,600 miles on the Pacific coast south of Peru to Cape Horn, having a breadth of 40 to 200 miles. The mineral resources of the country are extensive; gold, silver, copper and coal are mined to a large extent; there exist nitrate of soda, mercury, iron, zinc, nickel, antimony, arsenic, manganese, sulphur and borate of lime, cobalt, etc.; the deposits of copper are said to be inexhaustible. The area is about 293,000 square miles; and the population in 1911 was estimated to be 3,602,201. The capital is Santiago.

MONEY, WEIGHTS AND MEASURES—The condor=20 peso; the doblon=10 peso; the escudo=5 peso. The monetary unit is the gold peso, exchange value 1s. 7d. (about)=38 cents U. S.

The metric system is used.

#### *Laws.*

Law of November 12, 1874 and August 12, 1905.

#### *Term.*

The registration of all trade or commercial marks shall be renewed every ten years. Failure to renew them shall entail the extinction of the privilege. (Art. 7.)

#### *Kind of Trade Marks.*

The name of trade mark shall be given to any mark affixed to articles manufactured in Chile or in any foreign country by manufacturers or agriculturists. The name of commercial mark shall be given to those which a merchant adopts to distinguish the articles sold by him. (Art. 2.)

Proper names, emblems, and any other sign adopted by the manufacturer or merchant to distinguish the objects of his trade from all others shall be considered trade marks. Nevertheless, and in order to secure the proper legal effects, the initials "M. de F." (marca de fabrica, or trade mark) shall be added to the trade mark. The initials "M. C." (marca commercial or commercial mark) shall be added to the commercial mark. (Art. 3.)

#### *Requirements.*

Power of attorney legalized by Chilian Consul; seven copies of the mark.

#### *Publication.*

During the month of August of every year a list of the marks registered up to that time shall be published. (Art. 13.)

#### *Infringements.*

Articles bearing counterfeit marks shall be confiscated to the benefit of the legitimate owner. The instruments for the counterfeiting shall be destroyed. (Art. 12.)

He who falsifies, adulterates, or fraudulently uses the marks or designs to which the present law refers, shall suffer the penalty provided for by the Criminal Code. (Art. 2.)

With reference to the above article I publish a letter which the

Directive Council sent to the Minister of Industry and Public Works:

SANTIAGO, CHILE, March 15, '12.

Dear Sir:—With all due respect I take the liberty to inform you of the contents of a letter from the Minister of Great Britain, which refers to the fact that the Marks of Commerce registered in Chile can be imitated with impunity, because the Law does not grant to the aggrieved parties any compensation for the injuries suffered by them in their business. This note of the Minister is accompanied by two facsimiles of the Marks of Messrs. Buchanan & Co. and W. & A. Gilbey and of their imitations made in this country. The Minister adds that his Government confidently hopes that a bill now pending before the National Congress for consideration, intending to modify the present state of affairs, will be approved.

I must tell you in reply, that this society is, as you well know, empowered by the law of 1874 to keep the register of Commercial Marks, and that in order to comply with this order in the most scrupulous manner the same does not register any Marks that have even a remote similarity to previously registered Marks.

If, then, in commerce, imitations and falsifications are made, the interested parties have the right to prosecute the infractors of the Law in accordance with the jurisdiction given to them by the present Article 2 which says:

Article II. He who falsifies, adulterates or fraudulently uses the marks or designs to which the present law refers, shall suffer the penalty provided for by the Criminal Code.

The imitations or rather adulterations, contained in the labels which accompany the letter of the Minister, fall, in the opinion of this society, fully under the provisions of the cited Article.

With respect to the project to which the Minister refers, I beg to state, that the same is at present under consideration by the Senatorial Chamber. The society is of the same opinion as Senator Reverior, who is its author, to study the same jointly, before it is discussed, and to take interest in having it promptly dispatched by the National Congress.

God be with you.

(Signed) R. LARRAIN C., President.

(Signed) GUZMAN G., Secretary.

To the Minister of Industry and Public Works.

*Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No special legalization exists to prevent the importation of goods bearing a false indication of origin, but under the Customs Regulations, a declaration of origin must be made for statistical

purposes. It is open to traders who have registered a trade-mark in Chile and who consider their business is being injured by the sale of goods bearing false marking or description to bring an action against persons infringing their rights, but the time and expense involved generally deter foreign traders from prosecuting.

#### *Marking Goods.*

The Trade Marks Law of Chili requires that trade marks be, after registration, marked with the words "Marca de Fabrica" or "Marca Comercial" as the case may be. This is seldom done in Chili, and there are judicial decisions which seem to hold that compliance with this provision of the law is not necessary in order to obtain the benefits of registration. It is best, however, to comply with the conditions of the statute, with a view to safety in this country.

#### *Trade Names.*

In Chili, proper names are registrable as trade marks (law of 1874, Art. 3.), and there being no provision in the present law affecting trade-names other than this, it may be assumed that in order to procure the exclusive right to the use of a proper name in that country under the law as at present constituted, registration of the name must be made as a trade-mark.

#### *The Registration of Marks for Medicines.*

The National Society of Agriculture, which under the Chilian law is charged with the registration of trade-marks, has fixed the following provisions for the registration of marks applicable to medicinal or chemical products or patent medicines. For the registration of such marks, it is required that the labels shall show the name of the manufacturer, and if the interested party claims an exclusive right to the name, it must show that he has a patent for the manufacture thereof in Chili, or that he employs a name unknown in commerce before the date when the registration is sought. For the purpose of this proof, it is required to disclose the essential elements or formulas of the remedies or products, for the purpose of showing that a new designation has been adopted. This requirement as to the novelty of the name we presume to refer to fanciful as contrasted with the pharmaceutical names of drugs or preparations. (La Propriété Industrielle, 1912, p. 5.)

#### *Name of Patented Article.*

A decree was issued to the effect that when a special name is given to an article for which a patent is sought, it should be registered as a trade-mark before the grant of the patent if the party interested wishes to enjoy the exclusive property in said name. (Decree of June 14, 1909.)

## CHINA

The Republic of China proper is estimated to comprise an area of 1,532,420 English square miles and to contain a population of about 500,000,000. The principal independencies of China are Mongolia, with an area of 1,367,600 square miles, and a population of about 2,605,000; Manchuria with an area of 364,000 square miles and an estimated population of 16,055,000. Thibet has an area of 463,200 square miles and a population of about 6,004,000.

COMMERCE—The great bulk of the trade of China is carried on with Great Britain and the colonies. What are known as the treaty ports are those with which trade is carried on by virtue of treaties made with China; the principal are as follows: Amoy, Canton, Changsha, Chefoo, Chungking, Chinklang, Foochow, Hangchow, Hankow, Ichang, Kiukiang, Kiungchow, Newchwang, Nanking, Ningpo, Pakhoi, Samshui, Shanghai, Shashih, Soochow, Swatow, Tientsin, Wuhu, Wenchow, Wuchow.

The principal imports are cotton and woolen goods, raw cotton, opium, petroleum, sugar, rice, coal, metals, machinery, fish, matches, dyes, etc., and the principal exports are silk, tea, raw cotton, straw braid, beans, hides and skins, mats and mattings, etc.

MONEY—I tael=10 mace; 1 mace=10 candareen; 1 candareen=10 cash; 1,000 cash=6s. 8d (nominal value)=\$1.60 U. S. The value of a tael varies at different ports in China from 5s. 9d. to 6s. 8d. The Haikwan tael may be reckoned as usually about 2s. 7d. (Exchange value)=62 cts. U. S.

WEIGHTS AND MEASURES—The weight of a picul of 100 catties is held to equal 133 1-3 lbs. avoirdupois, and the length of a chang of 10 Chinese feet to be equal to 141 English inches. One Chinese chih is held to be equal to  $14\frac{1}{10}$  inches English; and 4 yards English, less 3 inches, to equal 1 chang.

*Law.*

Law of October 23, 1904.

REGULATIONS FOR THE REGISTRATION OF TRADE MARKS TO BE OPERATED EXPERIMENTALLY.

1. Any one, no matter whether Chinese or foreigner, who desires to have the exclusive use of a trade-mark, must first register the same according to these regulations.

A distinctive design, inscription, and emblem, either all three employed in combination, or any one or two of them, constitute the essential characteristics of a trade mark.

2. The Board of Commerce will establish a Bureau of Registration to attend especially to matters of registration, and the Customs at Tientsin and Shanghai will serve as branch offices for receiving applications, to the greater convenience of those who apply, who may present their petitions at the place nearest to them.

3. Applicants for registration may either send their applications direct to the Bureau of Registration or forward them through a branch office of application.

4. Every application must be accompanied by a description in which there shall be inclosed three impressions of the trade-mark. The description shall clearly and correctly explain, in a general way, the pattern of the trade-mark and tell on what sort of goods it is to be used, and to what class they belong according to the classification appended to the subordinate rules annexed to these experimental regulations. If the application be forwarded through a branch office of application, duplicates must be made both of the application and the description.

5. The Bureau of Registration, having received an application, and having found nothing in it contrary to the requirements, shall file the same for six months, and if within that time no person shall have petitioned against the registration, the said trade-mark shall be registered.

6. If applications be made for the registration of trade-marks which are similar to one another and which are to be used upon the same sort of goods, registration must be granted to the one first making application. If the several applications be presented at the same time on the same day, permission to register must be given to all.

7. In case of a trade-mark already registered in a foreign country, if application for its registration in China be made within four months from the date of its registration abroad, the date of such registration abroad may be recognized.

8. Trade-marks of the character specified below shall be refused registration:

(I.) Those which destroy respect for rank, do injury to the customs of the country, and (are likely to) deceive the people.\*

(II.) Those which imitate the impressions of seals especially reserved for the use of the government (such as the Imperial seal and the oblong lead seals of the various yamens), or which imitate the designs of the Imperial flag, the military banners, or decorations conferred for merit.

(III.) A trade-mark identical with one already registered belonging to another person, or, identical with one in public use in China more than two years before the present application

\*For instance such as use official emblems, or employ pictures which Chinese may regard as improper.

shall have been made, or trade-marks similar to either of the above if used upon the same sort of goods.

(IV.) Those which cannot be recognized by some distinctive feature.

9. The term during which any merchant, Chinese or foreigner, may be allowed exclusive use of a trade-mark shall be twenty years beginning with the date of registration by the bureau. But trade-marks already registered in another country and for whose registration here application shall have been made according to the regulations shall be allowed a term of exclusive use corresponding to that provided for in the registration abroad. (But in no case shall such term extend beyond twenty years.)

10. If after the expiration of the term of exclusive use it should be desired to extend such term, and application for a renewal of registration be made within six months before the expiration of the term of exclusive use, such application for renewal may be allowed.

11. Should the owner of a trade-mark already registered desire to sell to some one else the right to its exclusive use, or should he find it necessary to share its exclusive use with others, he must at once make application at the Bureau of Registration for registration of the change.

12. If any trade-mark already registered shall be found to violate the provisions of (I), (II), and (IV) of Regulation 8, the Bureau of Registration may cancel the registration of such trade mark.

13. If a trade-mark already registered shall be found to violate the provisions of Regulation 6, or those of (III) of Regulation 8, the injured party may make application to have the registration of such trade-mark annulled. But this provision shall not apply to any trade-mark already registered for three years.

14. If, upon application having been made for the registration of a trade-mark, the Bureau of Registration shall find that such trade-mark does not comply with the requirements, the Bureau shall indorse clearly upon the rejected application the reasons for refusing registration.

15. Any person unwilling to submit to the refusal mentioned in the preceding regulation may within six months after the date of the said refusal present a statement of facts and request the Bureau of Registration to reconsider the application.

16. If in any application for the registration of a trade-mark the owner of the trade-mark shall not be in China, or if he should reside at a considerable distance from the Bureau of Registration, he must select a reliable friend and report him as his agent or representative.

17. Should any one desire to make a copy of any records in



the trade-mark registration files, or examine the same, he may make application for such privilege either at the Bureau of Registration or at one of the branch offices. If he shall reside at a considerable distance his agent or representative may make such application.

18. The Bureau of Registration shall publish trade-mark reports, announcing therein for the information of the public what trade-marks have been registered and the circumstances connected with the cancellation of any registration.

19. Should any one infringe the right to the exclusive use of a trade-mark, the owner thereof may bring suit against the offender, who shall be required to pay damages if investigation sustain the charges made.

20. In case of a suit for the infringement of a trade-mark, procedure shall be as follows: (1.) If the defendant be a foreigner, the local magistrate shall send a dispatch informing the consul of defendant's nationality and shall sit with him in a trial of the case. (2.) If the defendant be a Chinese, the consul concerned shall send a dispatch informing the local magistrate and shall sit with him in a trial of the suit. (3.) If both parties to the suit should be foreigners, or if both parties should be Chinese, immediately upon information being given of the infringement, the court or officer having jurisdiction will take action as required, so that due protection may be given.

21. Any one guilty of any of the following offenses may be punished with not more than one year's imprisonment and not more than three hundred taels fine, but no action shall be taken against any such offender except after suit duly brought by the injured party:

(I.) Imitation of another's trade-mark with the purpose of using such imitation upon the same sort of goods as that on which the original is used, or selling such imitation.

(II.) Making an imitation of another's trade-mark and using the same upon the same sort of goods as those upon which the original is used, or with a knowledge of the circumstances, selling such goods or storing them with the intention to sell.

(III.) Using the imitation of another's trade mark as a shop sign in advertisement or placard.

(IV.) While knowing that the receptacle used by another (such as large or small box, bottle, jar, etc.), or the wrapper bears a registered trade-mark, yet using the same for goods of the same sort as the originals; or, while knowing the circumstances, selling such goods.

(V.) Purposely importing such goods into any port, knowing well that such action will injure (the sale of) another's goods which bear a registered trade-mark.

22. When on account of the circumstances set forth above such counterfeit trade-marks, or the instruments used in making

them are seized and confiscated, the goods, receptacles and signs bearing such trade mark, since it cannot be distinguished from the genuine, shall all be destroyed.

23. Fees for application, registration and issue of certificate, etc., shall be paid by all persons, whether Chinese or foreign merchants, as follows:

(I.) Application fee, Kuan-p'ing taels 5.00 each mark.

(II.) Fee for registration and issue of certificate, Kuan-p'ing taels 30.00 each mark.

(III.) Registration of transfer of rights, by contract of sale or partnership, Kuan-p'ing taels 20.00 each.

(IV.) Application for extension of expired term and renewal of registration, Kuan-p'ing taels 25.00 each.

(V.) Copy of record of registration of trade-mark Kuan-p'ing taels 2.00. (For every 100 characters over 100, 50 taels additional.)

(VI.) Examination of records, for each half-hour, Kuan-p'ing taels 1.00.

(VII.) Duplicate lost certificate, Kuan-p'ing taels 10.00 each.

(VIII.) Filing complaint of infringement, Kuan-p'ing taels 5.00 each.

(IX.) Application for reconsideration of rejected trade-mark, Kuan-p'ing taels 5.00 each.

(X.) Application for cancellation of registry, Kuan-p'ing taels 30.00 each.

(XI.) Transfer of certificate to heirs, Kuan-p'ing taels 5.00 each.

24. These regulations shall be of force from and after Kuanghsu XXX year, ninth moon, 15th day. (October 23rd, 1904.)

25. Inasmuch as mutual protection is required by the treaties, if, before the Bureau of Registration shall have entered upon its duties, request for the registration of any trade-mark shall have been presented at any yamen having jurisdiction the Bureau shall regard the application as having been already properly made.

26. If within six months after the Bureau shall have commenced operations application shall be made for the registration of trade-marks which were already registered in another country before the Bureau began its work, the Bureau shall recognize such trade-marks as entitled to precedence.

27. Although before the Bureau shall have been established various officials may have issued proclamations giving protection to various trade-marks, such marks shall not receive the benefit of protection unless within six months after the opening of the Bureau application shall have been made for registration according to the provisions of these regulations.

28. The provisions of the three regulations immediately preceding are independent of the requirements of Regulation 5.

All of the above regulations are to be put into operation experimentally. Matters not fully provided for in them may be taken into consideration and rules referring to them be added after these shall have gone into effect.

The above law has been suspended indefinitely.

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## COLOMBIA

The Republic of Colombia lies between the Atlantic and Pacific oceans. Its area is about 480,000 square miles, and the population in 1911 was estimated to be 4,670,650.

COMMERCE—The exports consist chiefly of cattle, balsam, cacao, coconuts, coffee, rice, tobacco, cotton, cinchona, bark, dried birds, drugs, gold, emeralds, powder, hats, hides, ores of different metals, ivory, nuts, India rubber, silver, timber, logwood, Brazil wood, and a variety of plants and other articles. The imports consist of every description of merchandise and articles of consumption.

MONEY—The monetary unit is a gold dollar=U. S. \$1.00.

For weights and measures the metrical system has been adopted.

### *Law.*

Law: Trade-marks are registered under Decree 217 and 218, 1900, and Decree 475 of March 14, 1902.

### *Duration.*

Unlimited.

### *Requirements.*

Power of attorney legalized by Colombian Consul; certified copy of home registration legalized by Colombian Consul; ten copies of the mark; one electrotype.

### *Who May Apply.*

Individual persons or companies who first made use of a trade mark are the only ones entitled to acquire the ownership of the same. In case of a dispute between two or more possessors of the same mark the ownership shall belong to the first owner. If the priority of possession cannot be established, the ownership shall belong to the one who first applied to the respective office for the registration of the mark. (Art. 7.)

### *Mode of Application and Procedure.*

Every Colombian citizen or foreigner who is the owner of a trade-mark shall acquire the exclusive right to use it in the territory of the republic by fulfilling the formality of having it

registered at the respective office, and for that purpose he shall submit himself to the following course of procedure:

1. He shall file, either personally or through an attorney, a petition to the Treasury Department, asking for the registration of his trade-mark, clearly explaining the distinctive sign which he wishes to use, the article or product to which it refers, and the place where said article or product is manufactured.

2. The application referred to in the preceding paragraph shall be written on stamped paper of the third class, and shall be accompanied by two copies, at least, of the trade-mark, or the representation thereof by means of a drawing or engraving, signed by the applicant, bearing the same date as the application. A revenue stamp of class first shall be affixed to each copy.

3. The application shall be published in the "Diario Oficial," and thirty days thereafter, if no opposition is made, the registration of the trade-mark, if industrial, shall take place.

The interested party shall then be provided with a certificate of registration, which shall be evidence of his exclusive ownership of the mark. This certificate shall be published three times in the "Diario Oficial." (Art. 1.)

The cost of publication of the application and certificate shall be borne by the applicant. (Art. 2.)

If the trade-mark whose registration is requested is commercial, the course of proceedings shall be the same described in Art. 1; but the certificate shall not be issued until sixty days have elapsed from the date of publication of the application. (Art. 3.)

Industrial trade-marks shall be, for the purpose of the present decree, all phrases or signs employed to distinguish a special product destined to industry or commerce. Commercial marks shall be those phrases or distinctive signs to be used by a merchant or a business house. (Art. 4.)

Powers of attorney executed in foreign countries, authorizing anyone in Colombia to ask for the registration of trade marks, shall have to be authenticated in due form by the respective minister or consular agent of the republic in the place of execution, provided that Colombia has accredited such officials in the country or place where the power of attorney is executed. (Art. 5.)

Trade marks belonging to foreign individuals or companies not residing in Colombia shall not be admitted to registration, except in case that they are already registered, in due form and through the regular proceedings of law, in the country of origin, this registration to be proved by an authenticated copy of the original certificate. The copy shall be then attached, as an exhibit, to the application. (Art. 6.)

The registration of the trade-marks, whether industrial or commercial, shall be made, without previous examination of the usefulness of the object, or of the quality and properties of the products for which they are destined. Everything in this respect shall be under the exclusive responsibility of the applicant, and the rights of third parties shall always be preserved. (Art. 8.)

Publication having been made in the "Diario Oficial" of the applicant's petition, so as to allow anyone interested in the matter to come and make opposition to the granting of the certificate, and an opponent having in fact entered his appearance in due time, and made the proper representations on the subject, as provided in Art. 1 of the present decree, the Secretary of the Treasury shall render his decision in the case. This decision shall put an end to all executive proceedings. Parties not satisfied with the decision may make use of their rights before the courts of justice.

#### *Infringements.*

Counterfeiters of trade marks shall be subject to the penalties established in articles 663 and 664 of the Penal Code.

#### *Assignments.*

A trade-mark is assignable with the good will of the business.

#### *Classification.*

There is no special classification in Colombia, but trade marks can only be registered in respect of those goods mentioned in the certified copy of home registration.

#### *Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No laws exist prohibiting the sale or importation of goods bearing a false indication of origin. The law prohibits the fraudulent application to goods of another's trade-name or of a trade-mark registered in Colombia. A civil action for the purpose of claiming damages in respect of these offenses can only be brought by the person injured. A criminal action may be brought by any foreign merchant affected, either acting through the representative of his government in Colombia, or in any other way. The expense of judicial proceedings would usually be small. The indication of the country of origin of imported goods is not required unless they are classified in the Customs Tariff according to their origin.

Marking Goods: (optional) "Marca Registrada."

## CONGO FREE STATE

The Congo Free State is formed from the territory formerly administered by the Congo International Association, founded in 1883 by Leopold II., King of the Belgians. That association, having obtained the recognition of its sovereignty by treaties in 1884 and 1885 with most of the European nations and the United States of America, adhered, February 26, 1885, to the resolutions of the Congress of Berlin. These resolutions establish freedom of trade in the basin of the Congo, and declare absolutely free the navigation of the Congo and its tributaries; provide for the protection of the natives and the suppression of the slave trade, and impose on the Powers which signed the Act the obligation to accept the mediation of one or more friendly governments should any serious dispute occur concerning the territories of the conventional basin of the Congo. An International Conference at Brussels in 1900 authorized governments which have territories in the conventional basin of the Congo to levy certain duties on imports. The state was placed under the sovereignty of Leopold II., King of the Belgians, on the basis of personal union with Belgium, but it has declared itself perpetually neutral in accordance with the provision of Chap. III. of the General Act of Berlin. By a will dated August 2, 1889, the King has bequeathed to Belgium all his sovereign rights in the state. On July 21, 1890, the territories of the state were declared unalienable, and a convention of July 3, 1890, between Belgium and the Free State, reserved to the former the right of annexing the latter after a period of 10 years. This right is continued under an act of August 10, 1901. The central government at Brussels consists of the King of the Belgians and, under his orders, a Secretary of State, who is chief of the departments of Foreign Affairs, Finance and the Interior. A Governor-General represents the King at Boma and administers the territories in accordance with the King's orders. The precise boundaries of the Free State were defined by the neutrality declarations of August, 1885, and December, 1894, after treaties with Germany, Great Britain, the Netherlands, France and Portugal. The territory is divided into 14 administrative districts: Banana, Boma, Matadi, the Cataracts, Stanley Pool, Kwango Oriental, Lake Leopold II., Bangala, Equator, Ubangi, Welle, Stanley Falls, Aruwimi and Lualaba-Kasai. At the head of each district there is a commissioner.

**INDIA RUBBER TRADE**—India rubber is obtained by incisions in the liane *Londophia Florida*, which exists in all the territories of the Free State, and it is chiefly found in the Upper Congo districts.

The only exports of importance consist of India rubber, ivory, palm oil, palm nuts, white copal, cacao and earth-nuts.

Principal goods imported are cotton goods, woolen and cotton blankets, glass beads, coral, imitation jewelry, china, glass and earthenware, table utensils in tinware and iron, all cheap hardware goods, mercury and perfumery.

The current money is the franc 100 centimes= $91\frac{1}{2}$ d. For weights and measures the metrical system has been adopted.

*Law.*

Law, April 26, 1888.

*Duration.*

Fourteen years.

*Who May Register.*

Foreigners as well as natives of the Congo Free State are admitted without distinction to the benefits of the present decree for the products of commercial or industrial establishments conducted either within or without the country. (Art. 4.)

*What May Be Registered.*

Every mark used to distinguish the products of an industry or objects of commerce is considered a trade-mark or a commercial mark.

The name of a person, as well as the firm name of a commercial or industrial house may, in the distinctive form given it by the interested party, serve as a trade-mark. (Art. 1.)

He only who first made use of a mark may effect the registration of it. (Art. 3.)

*Mode of Application.*

The person registering the mark should furnish (1) A copy in triplicate of the mark adopted. This copy should be drawn within a border, which should not exceed 8 centimetres in height and 10 centimetres in width. (2) An electro of the mark. The dimensions of the electrotype, which shall be of metal, must not exceed those of the border mentioned above. (Art. 3.)

The registration of trade-marks or commercial marks shall be inscribed in a special register, and signed by the registrant or his attorney, as well as by the Administrator General or his delegate. The power of attorney is to be attached to the registration. The latter shows the day and hour of registration. It indicates the kind of industry or of commerce for which the registrant has the intention to use the mark.

A certificate of the registration is delivered to the registrant.

Advertisement of registered marks shall be made in the Official Bulletin. (Art. 1.)

There is to be paid a tax of twenty-five francs for each mark registered.

*Assignment.*

A trade-mark may not be assigned except with the establishment, the articles of which, either of manufacture or commerce, it serves to distinguish.

The assignment is not of effect in regard to third parties until after the registration of a copy of the instrument of assignment. Mention of the assignment of the mark shall be made on the margin of the record of registration and copies shall be inscribed on the certificate sent to the interested parties and to the Court of the Congo.

Every assignment of a mark by contract between living persons or by will is subject to a tax of ten francs. (Art. 5.)

*Penalties.*

There shall be punished by a fine of twenty-six to two thousand francs and imprisonment of eight days to six months, or by one of these penalties only:

(a) Those who counterfeit a mark and those who fraudulently make use of a counterfeited mark.

(b) Those who fraudulently affix to the products of their industry or articles of their commerce a mark belonging to another.

(c) Those who knowingly sell, place on sale or in circulation, products bearing a mark counterfeited or fraudulently affixed. (Art. 6.)

If there exist extenuating circumstances, the penalties of imprisonment and fines may be reduced below the minimum fixed in Article 6.

Special confiscation may be pronounced in conformity with Article 34 of the decree of January 7, 1886.

A public action may not be prosecuted except on the complaint of the injured person.

Marking Goods: "Marque déposée."

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## COSTA RICA

The republic of Costa Rica is the most southern of the five Central American republics. It is bounded on the northwest by the Republic of Nicaragua; on the southeast by Panama; on the northeast by the Atlantic Ocean, and by the Pacific Ocean on the southwest. The area of the republic is estimated at 38,330 square kiloms., or about 23,000 English square miles. The population in 1911 was estimated to be 385,910. The chief ports are Punta Arenas on the Pacific and Port Limon on the Atlantic.



COMMERCE—The principal article of export from Costa Rica is coffee, two-thirds of which goes to England. There is also a considerable export of bananas, of which 8,872,729 bunches were exported during 1910.

MONEY, WEIGHTS, AND MEASURES—The monetary unit of Costa Rica is the gold colon (=100 centavos)=1s. 10½d.=45 cents United States.

For weights and measures the metrical system has been adopted.

*Law.*

Law of May 22d, 1896.

*Term.*

The ownership of a trade mark is acquired only for a term of fifteen years, but may be renewed indefinitely for ten years. (Art. 5.)

*What May Be Registered.*

Trade-marks are defined to be the names of manufacturers and business firms, seals, stamps, engravings, vignettes, monograms, mottoes, legends, or any other distinctive signs whatsoever, serving to identify the products of a manufactory or the articles constituting the trade of a commercial house. (Art. 1.)

The law of Costa Rica makes the names of manufacturers and traders registrable as trade-marks and confers the right to the exclusive use of trade-marks upon the first registrant (Art. 3.) Apparently, therefore, in this country registration of a trade-name under the trade-mark law is necessary to its protection.

*Requirements.*

Power of attorney legalized by Costa Rican Consul; eight copies of the mark, and one electrotype.

*Renewals.*

To renew the term of a trade-mark it will be sufficient for the owner to make a declaration to that effect before the proper bureau within thirty days after the expiration of the concession. The concession shall be forfeited if no declaration is made within the period above stated. (Art. 6.)

*Infringements.*

The responsibility for infringement of trade-marks shall be placed, until their innocence is established, upon the person or persons on whose account the fraud has been committed, the authors of the forgery, and the importers or dealers of the counterfeited article or product. (Art. 8.)

Infringement of trade-marks shall be punished in conformity with Article 496, Paragraph 3, of the Penal Code. (Art. 9.)

*Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No law is in force to prevent the sale or importation of goods bearing false indications of origin, except that for the protection of goods having duly registered trade-marks. A criminal action could be brought by an injured party or his attorney for infringement of trade-marks. If a Consul acted he would have to hold power of attorney. The cost of prosecution would be not less than \$300.00. The country of origin must be stated in the Consular invoice and a false description in such invoice would render goods liable to confiscation.

Marking Goods: "Marca Registrada."

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## CRETE

The three principal ports of Crete, one of the largest islands in the Mediterranean, are Candia, Canea and Rethymo. The other ports are Suda, Calyves, Bali, Melata, San Nicola and Sitia. The staple product of the island is olive oil, which is also the principal article of export, together with calonia, wine, locust beans, soap, almonds and cedars. Wine is produced in large quantities, the total export amounting to about 1,000,000 gallons. The greater part of the wine, especially that of inferior quality, finds its way to Egypt and the coast of Barbary, while the rest is bought for the French, German and Italian markets, where it is manipulated and sold under other names. The Cretan wines, being very alcoholic, are found useful for fortifying the weaker qualities of France and Germany.

The imports are principally Manchester goods and woolen stuffs and cloth. The population of the entire island is upwards of 350,000.

*Law.*

Law of June 19, 1908.

*Term.*

The legal protection of the registered trade-mark extends to the term of ten years. If this term has elapsed, a prolongation may be applied for, which will be granted upon the ground of Art. 4 and those following. In case several persons apply for the prolongation of a trade-mark already lapsed, the pref-

erence will always be given to the last owner of the mark in question. (Art. 14.)

#### *Who May Apply.*

The commercial and manufacturing marks of industrials for (use on) machines, products of trade, industry, of agriculture and cattle breeding, are recognized in Crete and enjoy legal protection based upon the provisions of the present law.

The trade marks of persons belonging to foreign States, who reside abroad, are recognized in Crete, and have legal protection upon the condition of international reciprocity between the State of Crete and the State to which the foreigner belongs. (Art. 1.)

#### *What May Be Registered.*

All marks and prints, intended to distinguish the products of industry and trade, agriculture and cattle breeding, which are found in commerce, are considered to be manufacturing and commercial marks. (Art. 2.)

Trade-marks may consist in a simple name, or the name of a company, or in any other mark, picture, representation, etc.

Exception is made of representations and marks which offend against public order and morality.

The manufacturing or commercial mark is affixed directly upon the article or upon the packing of same, by pasting, impressing or engraving or by any other means. It suffices that the mark is outwardly visible. (Art. 3.)

#### *Mode of Application.*

He who wishes to obtain the recognition and protection of a trade-mark is obliged to present to the Board of Finances of the local government a suitable petition in which shall be stated:

1st. The nature of his business and his domicile.

2nd. His nationality, proved by an official certificate.

3rd. Proof that he has paid into the Treasury of the Government the tax of 100 francs.

In addition, the application must be accompanied by two impressions on paper of the trade-mark in question and an electrotype of same. (Art. 4.)

The Secretary of the Board of Finances is obliged to record the application provided for in Art. 4, immediately upon its receipt, and to deliver to the applicant a certificate of the registration effected, which must bear the date and the hour of application, as well as the number of the record. All applications of manufacturing and commercial marks must be recorded, even if they do not correspond to the prescriptions of Art. 4, and for that reason are defective. (Art. 5.)

A defective application may be completed later, but the right

of priority, according to Art. 11, will be secured only at that moment in which the petition has been completed in accordance with the prescriptions of Art. 4. (Art. 6.)

As soon as the petition is complete and fulfills the legal requirements, the Board of Finances issues as soon as possible a decree in regard to the recognition of the trade-mark applied for.

The decree will be entered in a special register for commercial and trade-marks with a serial number, on a separate page, upon which will also be placed a representation of the trade-mark. A publication of the trade-mark applied for also takes place in the Official Journal. A copy of the decree will be delivered to the applicant. In the document delivered, the number of the entry in the register must be given, and the number and date of the issue of the Official Journal in which the publication has taken place. To this document must also be affixed a representation of the commercial or manufacturing mark. (Art. 7.)

The recognition of the commercial or manufacturing mark takes place as soon as the application is complete; that is, fills the legal conditions. (Art. 8.)

If several marks resembling each other are presented for registration that one which is first presented will be recognized.

If several corresponding trade-marks come up for application in one day, the preference will be given to that person who first has publicly announced the mark. (Art. 11.)

### *Assignments.*

The rights acquired to a trade-mark are assignable only under the condition of the employment of same in the industry trade, agriculture and cattle raising for which the protecting mark is intended.

The assignment is effective only if a corresponding entry is made on the proper page of the register intended for that purpose, and publication in regard thereto takes place in the Official Journal.

For each assignment of a trade-mark 50 francs are to be paid to the state. (Art. 13.)

### *Legal Protection and Penalties.*

The legal protection which is accorded to the owner of a trade-mark consists in this, that he has the right:

- 1st. By accusation to move for the prosecution of him who makes wrongful use of his mark;
- 2nd. By means of a complaint to claim from the person in

question, upon the ground of provisions of the civil law, compensation for the damages caused him. (Art. 15.)

Misuse of the trade-mark of another is considered to be:

1st. Fraudulently affixing a mark belonging to another to an article of commerce;

2nd. The counterfeiting of the trade-mark of another or the fraudulent use of a counterfeited trade-mark for his own advantage.

3rd. The representation of the mark of another with a view to deceive the public, or the fraudulent employment of an imitated mark;

4th. Knowingly selling or offering for sale an article which bears a counterfeited or fraudulently imitated trade-mark. (Art. 16.)

The party guilty of making misuse of a trade-mark will be punished with imprisonment of from one to six months and a fine of from 200 to 1,000 drachmas.

An extract of the judgment of the court will be published in the Official Journal. (Art. 17.)

The counterfeited or imitated trade-marks will be seized, even in case the defendant is acquitted.

In case the trade-mark cannot be confiscated without the article of commerce, the court causes the destruction or erasure of the mark. The guilty party bears the costs, meanwhile, moreover, there takes place the seizure of the article on which is found the trade-mark to be destroyed. (Art. 18.)

If the recognition of a trade-mark takes place in an illegal manner, same will be declared void on the ground of a decree of the competent court of first instance. An appeal against the decree is admissible.

The declaration of nullity will be published in the Official Journal, and an extract therefrom entered upon the margin of the registration effected according to Art. 7.

The declaration of nullity takes effect simultaneously with the publication thereof. (Art. 19.)

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## CUBA

This island is the largest of the West Indies. The area is 44,164 square miles. The population in 1908 was estimated to be 2,140,246. On January 1st, 1899, Spanish sovereignty in Cuba ceased, and its occupation by the military forces of the United States commenced. This ended on May 20th, 1902, when the control of the island was handed over to the new Government. An insurrection broke out in August, 1906, and the island was

placed under the provisional Government of a Commissioner appointed by the United States of America. The Provisional Government was ended in January, 1909, and a new president assumed office.

The principal industries of Cuba are the production of sugar, cigars and tobacco. The minor exports are cabinet and dye woods, honey, wax, sponges, manganese, iron and copper ores and fruit.

The principal imports into Cuba are flour, rice, potatoes, dried codfish, groceries, wines and liquors, machinery, woollen and cotton goods, crockery, hardware, glassware, cattle, maize, lard, beer, and "tasajo" (dried beef). Flour is imported from Spain and the United States, the bulk of rice comes from India, via Liverpool, a small amount from Spain and the United States. Potatoes are imported from the United States, Spain, and Canary Islands, codfish from the United States and Canada, and a small amount from Europe, groceries chiefly from the United States, wines and liquors almost entirely from Spain. The greater part of the sugar machinery comes from the United Kingdom; agricultural implements from the United States. Almost all tools are of American manufacture, Germany and the United Kingdom supplying few.

MONEY, WEIGHTS AND MEASURES—Dollar, 100 cents=1 Dollar United States. Weights and measures, metric system.

#### *Law.*

The basic law is the Royal Decree of August 21, 1884. By its terms the protection afforded extends to foreigners only so far as provided by treaties of reciprocity. Under the Military administration of the United States, War Department Circulars Nos. 12, 21, 34 and 38 were published during 1899 and 1900 providing for the filing of certified copies of United States Trade Mark Registrations. Civil order No. 511 of December 18, 1900; No. 512 of December 19, 1900; No. 18 of January 17, 1901 and No. 105 of April 19, 1901, each amended the law of 1884, and No. 512 also amended Article 287 of the Penal Code. Civil order No. 160 of June 13, 1901, defined the extent and limitations of protection accorded to trade marks (as well as other industrial property).

Rules of May 5, 1903.

#### *Term.*

Fifteen years; renewable.

The certificates of ownership shall become extinct and terminate at the expiration of fifteen years, to be counted from the date of their concession; but they may be renewed by exactly the same process as was followed for their acquisition. (Art 17.)

*Who May Register.*

Cuban merchants and manufacturers, or foreigners belonging to countries having treaties with Cuba or granting reciprocity to Cuban citizens.

*What May Be Registered.*

The names of the manufacturers, merchants, agriculturists, or companies formed by the same, the names of business houses, emblems, coats of arms, engravings, vignettes, marks, stamps, seals, stamps in relief, letters, numbers, envelopes, coverings, wrappings, or any sign of whatever class and form used by the merchant, agriculturist, or company to distinguish their products or merchandise and secure them in order that the public may know and distinguish them from others of the same nature. (Art. 1.) Trade mark registration is compulsory.

*What May Not Be Registered.*

The national coat of arms and the insignia and decorations of Spain, unless upon competent authority to that effect.

The coats of arms, insignia, mottoes, etc., of foreign States or Nations without the express consent of the respective Governments.

*Mode of Application.*

The applicant shall petition the Department of Agriculture, Industry and Commerce, either in person or through an attorney, filing a certified copy of the home registration legalized by the Cuban Consul. These documents must be accompanied with a translation thereof into Spanish. With the certified copy, five facsimiles must be filed, and before registration is accepted a fee of \$12.50, U. S. currency, must be paid.

*Penal Provisions.*

The following shall be punished by Executive order with a fine of from \$15 to \$45, without prejudice to the civil and criminal actions which may arise from their acts:

1. Those who should use a trade mark, industrial drawing or model without having obtained the corresponding certificate of ownership.

2. Those who, although legitimate owners of a trade mark, should apply it to articles different from those for which it was granted.

3. Those who should detach from an article of merchandise the trade mark of the producer or owner without his express consent.

4. Those who should use a mark after the lapse of ninety days subsequent to the publication of the present decree without having complied with the provisions of the same in its transitory articles.

5. Those who should use a trade mark transferred to them without having proved and entered the transfer within a period of ninety days.

Failure to pay these fines shall subject the delinquent party to imprisonment at the rate of one day for each dollar of the fine. (Art. 39.)

The following shall be punished with a fine of from \$45 to \$135, and to imprisonment as established above in case of failure to pay the fine:

1. Those who should commit a second offense, this fact to be established by proof that they were punished for the same offense during the five preceding years.

2. Those who should use a trade mark forbidden by law. (Art. 40.)

The provisions of article 228 of the Penal code in force in Cuba and Porto Rico shall be applicable to those who should use counterfeited marks imitating in such a way the genuine ones, that the consumer may be led into error or confusion. (Art 41.)

Those who should change wholly or in part their own trade marks, industrial drawings, or models without requesting and obtaining due authority to do so, shall forfeit their ownership of a mark. (Art. 42.)

The action to denounce the violations of this decree shall be public. (Art. 43.)

#### *Assignment.*

The trade mark is assignable only with the assignment of the business; unless recorded a transfer is without effect as to third parties.

#### *Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No law is in existence to prevent the sale or importation of goods bearing a false indication of origin, but in the event of a complaint being made to the Department of Patents, based on the Arrangement signed at Madrid on April 14, 1891, for the prevention of false indications of origin on goods, the matter would be referred by that Department to the Department of Justice. It is thought that a complaint should be made only by an interested party. No steps are taken to prevent the importation of goods bearing false indications of origin. There are no requirements as to the marking of imported goods, to show the country or place of origin or to denote that they are foreign.

Marking Goods: "Marca Registrada" (optional).



*Decisions and Decrees.*

By a decree of the President of the Cuban republic, dated August 15, 1910, the use of the red cross is prohibited, except with the authority of the Red Cross Society. Trade marks registered prior to April 16, 1907, are exempt from the provisions of the decree and their use by the registrants is permitted, until the expiration of the term for which they were granted. The renewal of such registrations is, however, forbidden. The registration of new trade marks, embodying the name or the emblem of the red cross is forbidden, whether they be native marks or foreign marks.

The constitutionality of this decree is questioned. The use of trade marks is regulated by royal ordinance of August 21, 1884, which enumerates the signs or emblems that may be used as trade marks, and does not prohibit the use of the red cross. The only way in which this law can be amended, under the Cuban constitution, seems to be by act of congress. It would appear, therefore, that the decree of the president is an usurpation of the powers of the legislature, and therefore, invalid.

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An application having been made for registration of a mark consisting of the words "Cazalla Triple Brandy" for alcoholic liquors, the Secretary of Agriculture, Commerce and Labor held that the phrase was descriptive, and therefore, not registrable as a trade mark, in view of the fact that the word "brandy" was the name of a common alcoholic liquor manufactured by the applicant. Upon appeal to the president of the republic, the latter official holds that, although the word "brandy" is a generic term, the additional words prefixed to it give to the mark a peculiar character, differentiating it from other marks and, there being no prior registration with which it conflicts, the application should be granted.

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Office of the Secretary of Agriculture, Commerce and Labor.

Inasmuch as the Royal Decree of August 21, 1884, dealing with the subject of marks, defines in Chapter VII the infractions that are punishable by the Government, among which we find those, relating to the use of marks for which a suitable Certificate of Ownership has not been obtained, and as in general infractions of this character are due to ignorance of said penal regulations, attention is again called to the fact that the same are still in force, as has been done in previous circulars, emanating from the Office of the Secretary, giving notice that the punishments, pre-

scribed in the Law, will be rigorously dealt out to the infractors, in case the complaints that are filed are proven.

Therefore the order of the Hon. Secretary of this Department shall be published in the Official Gazette, for the information of manufacturers, merchants, agriculturists and industrials of any class, who may use marks without having them duly registered in said Office of the Secretary.

Havana, May 24, 1909.

(Signed) LUIS PEREZ, Asst. Secretary.

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In the United States, the acts of the administrative officers involving judicial functions, such as conflicting rights to trade marks, are commonly made renewable by the courts, but under the Cuban constitution the separation between the executive and judicial branches of the government is carried to such an extent that the right to review the acts of an administrative head of department is given to the president of the republic. The officer being regarded as an administrative officer and his acts as administrative acts, the constitution, logically perhaps, keeps the question of the determination of the validity of his rights in the hands of the executive branch of the government. Whether this entire separation and independence one from the other, of the two branches of the government, is calculated to secure a just discharge of administrative duties may be open to grave question. At any rate it is quite foreign to our idea of the degree of independence which the executive branch of the government should enjoy.

In the case in question, the trade mark "Oriental" had been registered to a certain party for hair dyes. Subsequently an application was made for the registration of the name "Continental" for the same goods and the registrant of the prior mark opposed the registration, claiming that it was an imitation of the mark already registered, not only in the resemblance between the words, but in the color and form of the receptacles in which the goods were enclosed. The Secretary of Agriculture nevertheless granted the registration and an appeal was taken to the President of the republic. The latter official, considering the resemblance between the words and also between the articles themselves as they were presented upon the market, held that the resemblance was such as to cause confusion on the part of the public and to damage the business of the registrant. The president pointed out that not only in sound and appearance did the words resemble each other, but in their significance as well, and, reversing the decision of the Secretary of Agriculture, directed the cancellation of the mark. (Gaceta Oficial, Nov. 20, 1909.)

## TRADE NAMES IN CUBA

The Cuban Patent Office has adopted a commendable caution in registering trade marks for which application is made by parties other than those to whose efforts their value is due. Following are some recent applications, with the reasons for their refusal:

*"Faultless,"* for men's shirts and cuffs.—Because the title applied for corresponds to an American trade-mark, for distinguishing shirts which are imported into this republic by the trade in general.

*"Zig-Zag,"* for candy made with corn and peanuts.—By reason of the information given by the Chamber of Commerce, Industry and Navigation to the effect that the said mark belongs to D. L. Clark & Co., of Louisiana, U. S. A.

*"La Praviana,"* for pork sausages and all kinds of sausages and hams.—Because the title applied for is used by Messrs. Cairo & Co., of New York, on the pork sausages and other sausages which they import into this market.

*"La Sevillana,"* for olive oil.—Because the oil from the factory of Messrs. Montero, Quelle y Cia. is imported here with the same mark.

*"Globe,"* for glucose and starch.—Because a starch is imported into this market by the New York Glucose Co., of the United States, bearing the same mark as that applied for.

*"Diebold's Special,"* for safe deposit vaults.—Because it is liable to confusion with the same product imported into this republic by the Diebold Safe & Lock Co., of the U. S.

*"Cubana,"* for biscuits, extra fine.—Because the mark applied for is used in the biscuit industry to designate a special kind, and the granting of this word as a mark would result in a monopoly injurious to the manufacturers of the same line of business.

*"Daisy,"* for weighing scales.—Because of the information given by the Chamber of Commerce, Industry and Navigation to the effect that the scales received by the trade in general from the U. S. bears the same mark as that applied for.

The Cuban Patent Office has rendered a decision involving the question of the rights of American firms under Section Eight of the International Convention which provides that commercial names shall be protected in the various countries of the International Union without the necessity of registration. Application was made by a native of Cuba for the registration of the word "Manhattan" as a trade mark for shirts. The Manhattan Shirt Company of New York, learning of the application, filed an opposition thereto with the Cuban Patent Office, setting up its rights under the section of the International Convention above referred to. The office sustained the opposition and refused to register the mark, upon the grounds advanced by the American firm.

## CURACAO, OR DUTCH WEST INDIES

Curacao, the largest island of the Dutch West Indies, is situated in the Caribbean Sea, off the north coast of Venezuela, and extends from northwest to southeast in latitude  $12^{\circ} 6'$  north and longitude  $65^{\circ} 69'$  west. Population in 1911, 42,000. There is telegraphic communication to all parts of the world.

Provisions, such as flour, cornmeal, breadstuffs, lard, kerosene, lumber and ice, are imported from the United States of America regularly by two British vessels, and an American line of steamships calling here weekly with European and American mails, and connecting with homewardbound steamships from Puerto Cabello and La Guaria, as also with Coro and Maracaibo boats. The principal articles of exports are salt, divi-divi, phosphate of lime, aloes, orange peel, goatskins and straw hats.

Monetary unit is the Dutch Florin=100 cents=1s. 8d.=40 cents United States; for weights and measures, metrical system.

### *Law.*

Law: November 19, 1893, as amended by the Law of the 31st of May, 1905.

### *Duration.*

Twenty years; may be renewed before the expiration of the twenty year period for a similar term.

### *Mode of Application.*

Registration must be applied for at the Branch Office of the Industrial Property Office at Willemstad.

### *Requirements.*

Power of attorney (not legalized). One power suffices for several applications filed at the same time.

Ten copies of the Mark.

Electrotype, measuring in length and width not under 1,5 centimetres, and not exceeding 10 centimetres, and of a depth exactly 24 millimetres.

The registration is published in the "Curacaosche Courant" (Official Gazette).

### *Assignments.*

For registering an assignment it is absolutely necessary that the good will and business of the original proprietor of the trade mark shall also be assigned to the subsequent proprietor. For assignment the following documents are necessary:

Power of attorney (not legalized).

A copy of the assignment of the business to the new proprietor. This document must be executed before a notary and legalized before a Dutch Consul; it is not returned.

A certificate of transfer is also published in the Official papers.

A mere change in the name of the proprietorship can only be recorded in the Trade Marks register by payment of the same government fees and by fulfilling the same formalities as for assignments.

Classification and other formalities the same as Dutch East Indies.

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## CYPRUS

The island of Cyprus is administered by Great Britain under a convention with Turkey in 1878. It is situated in the extreme east of the Mediterranean, and has an area of 3,584 square miles, and a population in 1911 of 352,171. The capital is Nicosia, in the centre of the island. The principal ports are Larnaca and Limassol. The products of the island are grain, cotton, linseed, aniseed, wool, skins, wine and spirits, olive oil, locust beans, silk, salt and sponges. The principal industries of the island consist of silk weaving and tanning, which are carried on at Nicosia.

The industry of the island is principally agricultural. Fruit and vegetables are raised in considerable quantities; also wine and spirits, principally exported to Egypt; there is also a considerable industry in sponge fishing:

MONEY, WEIGHTS AND MEASURES—Money: 40 paras=1 copper; piastre=1 1/3d.=about 3 cents United States, 9 piastres (c/p) =350 paras=1 shilling=24 cents United States. Weights and measures: the oke (in weight)=2 4/5ths British standard pounds; the oke (in liquid measure)=2 1/4 pints or 400 drachms; the cantar=44 okes; the kile=1 Imperial bushel.

### *Law.*

Law No. VIII, July 11, 1910.

### *Duration and Renewal.*

The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Law.

The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may

be, which date is herein termed "the expiration of the last registration."

*What May Be Registered.*

A registrable trade mark must contain or consist of at least one of the following essential particulars:

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname.

(5) Any other distinctive mark, but a name, signature, or word or words other than such as fall within the descriptions in the above paragraphs (1), (2), (3) and (4), shall not, except by order of the Court, be deemed a distinctive mark;

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used in Cyprus as a trade mark by the applicant or his predecessors in business before the first day of January, one thousand eight hundred and ninety-eight, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Law.

*Mode of Application.*

(1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Law the Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at the decision and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the

Registrar, other than those stated by him, except by leave of the Court hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favor of the applicant, the Registrar shall, unless the Court otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Law to be the date of registration.

#### *Opposition.*

(1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required,

hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the Court bring forward further material for the consideration of the Court.

(8) In the proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinabove provided except by leave of the Court hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) The Registrar shall have power in proceedings under this section to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in Cyprus the Registrar or the Court, as the case may be, may require such party to give security for costs of the proceedings before him or if relative to such opposition or appeal and in default of such security being duly given may treat the opposition or appeal as abandoned.

#### *Assignment.*

A trade mark when registered shall be assigned and transmitted only in connection with the good will of the business concerned in the goods for which it has been registered and shall be determinable with that good will. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the good will of the business therein in such goods.

#### *Classification.*

A trade mark must be registered in respect of particular goods or classes of goods.

#### *Infringement.*

In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the



usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

*Requirements.*

Power of attorney; six copies of the mark; one electro or wood cut.

*Marking of Trade Marks.*

“Registered Trade Mark.”

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## DANISH WEST INDIES

The island of St. Thomas is about 13 English miles in length by 3 in average breadth, and has an area of about 70 English square miles and a population of about 20,000. It is formed by lofty hills mostly extending from east to west, the highest attaining an altitude of 1,480 feet at its highest point above the ocean level. The sea all round is studded by several small islets or “keys” belonging to the main island, and at about two miles distance north-east lies the large but thinly-populated island of St. John’s, also Danish territory; to the south, the Danish island of St. Croix, 40 miles distant. There is a fine harbor where 200 vessels can anchor in safety, only exposed to winds from S. W. round by S. to S. to S. E. by E., but winds from these quarters seldom prevail. There are large coaling depots and wharves, and steamers drawing 30 feet can coal alongside at the rate of 80 to 100 tons per hour, during day or night; a repairing slip where vessels of 1,000 tons can be hauled up; an iron floating dock, capable of lifting vessels of 3,000 tons weight, 300 feet keel and 20 feet draught; a steam factory with first-class means of repairing steamers requiring to refit; also shipwrights’ yards where work is well executed and a large supply of spars, etc., kept on hand, as this port is resorted to by vessels in distress.

St. Thomas now furnishes goods but to a few of the neighboring islands, including some parts of Haiti and St. Domingo, and still has several regular lines of steamers running here, which is their West India coaling station and for a few their head station and is annually visited by a large number of sailing and steam ships of all nationalities, for coals, for provisions, for repairs, and for freight employment.

*Law.*

Law: Ordinance, April 1, 1910.

The Danish trade mark law has been so extended that registration under it shall afford protection to the mark in the Danish

West Indies. The protection thus obtained covers a period of ten years from the date of registration of the Danish trade mark.

The protection may be renewed repeatedly for another period of ten years by filing a trade mark in Denmark.

The Ordinance of April 1, 1910, allows extension to the Danish West Indies of a trade mark which has been first registered in Denmark.

*Requirements for Registration.*

1. Official copy of the registry in Denmark.
2. Power of attorney, legalized by a Danish Consul; electrotype and five copies of the mark.

## DENMARK

Although one of the smallest kingdoms of Europe, Denmark is at the same time one of the most extensively cultivated. Its fields and meadow lands are greater in extent than those of Portugal and Belgium, but little less than those of Sweden, and five times greater than those of Norway, and every year shows an onward movement in increased culture and improved agriculture. Being a country of few native industries, and depending mainly on the produce of the land and its live stock for subsistence, the prosperity of the country is affected considerably by good or bad harvests.

The area of Denmark is about 15,218 English square miles. The population of the kingdom on the 1st January, 1911, was estimated to be 2,982,119.

**MONEY, WEIGHTS AND MEASURES**—The monetary unit in Denmark is the Krone=100 Ore=1s. 1 1/3d.=about 27 cents United States. As to weights and measures this country has adopted the metrical system.

*Laws.*

Laws: April 11, 1890; December 19, 1898; March 29, 1904; April 27, 1894; March 30, 1906; April 19, 1907.

Ordinances: November 24, 1893; September 28, 1894; September 12, 1902; August 30, 1906.

Regulation: April 11, 1890.

*Duration.*

The duration of the period of protection is ten years from the date of registration. The protection may be renewed repeatedly for another period of ten years.

*Who May Register.*

Any person who carries on in this country a manufacture or handicraft, agriculture, mining, commerce, or other trade may, besides the right he has of using as a trade-mark his name or firm name or the name of some real property belonging to him, acquire by registration in conformity with the provisions of this law the sole right to the use of special trade-marks, in order to distinguish in general sale his goods from those of other people. This right shall include all kinds of goods, when in the registration it has not been confined to certain kinds of goods.

*Not Registrable.*

A trade-mark cannot be registered if it consists exclusively of numbers, letters, or words, which have not such a distinctive form that the mark can be regarded as characteristic. However, the registration shall not be refused when the mark consists of words that may be considered as a specially invented designation for certain goods to be stated in the application in accordance with Section 3 provided the said designation is not intended to indicate the origin, the nature, the purpose, the quantity, or the price of the said goods (Law of Dec. 19, 1898); or

If it without warrant contains any other name or any other firm name than that of the applicant, or the name of the real property of any other person; or

If it contains public coats of arms or marks; or

If it contains representations which might cause public scandal; or

If it is completely similar to a trade-mark which has been already registered for another person, or for which due application has been made for registration for another person, or which shows such a similarity to the same that the marks in their entirety, notwithstanding difference in details, may easily be confounded; registration shall, however, not be refused if the similarity depends upon such signs as are mentioned in Section 7, or if the marks refer to different kinds of goods.

(If a registered trade-mark contains numbers, letters, or words which, according to Sec. 4, cannot be separately registered (Law of Dec. 19, 1898), or if it consists wholly or partly of such signs or marks, as are in general use in particular industries, other people are not excluded by its registration from using the same signs as a trade-mark or a part thereof.—Section 7.)

*Mode of Application.*

Anyone who wishes a trade-mark registered shall deliver to the Registrar or send to him in a paid letter an application in

writing, containing a clear description of the mark and complete information respecting the applicant's name or firm, trade and postal address, and also, in case the right to the trade-mark shall only include certain kinds of goods, a specification of such goods.

The application should be accompanied by:

1. A drawing on durable paper of the trade-mark in triplicate of a length not exceeding 15 cm. (5.74 inches) and a breadth not exceeding 10 cm. (3.83 inches.)

2. Two blocks or casts of the same size suitable for the printing of the mark.

3. A fee of 40 kronies for the registration and its publication. The Registrar shall as soon as possible deliver to the applicant, or when the proper address has been given, send by post, an acknowledgment in writing of the receipt of the application as well as the date and hour thereof. To the acknowledgment shall be attached one of the delivered copies of the trade-mark. (Sec. 3.)

The examination of the application in the office, comprises a search among the records for similar marks and an examination of the mark itself for the purpose of determining whether it is open to any legal objection.

If the office finds that the application cannot be accepted as filed, the applicant is invited to remove the objection.

When no objections are found to the registration of the mark, the case is allowed and the mark registered, whereupon it is published in the Official Journal.

Upon request, a special certificate of registration is issued upon payment of a fee of two Danish crowns.

If the registration is rejected a notice to that effect, stating the reasons of refusal, will be sent to the agent of the applicant by letter.

Within two months from the date of such notice the applicant may enter appeal against the decision to the Home Ministry; this step, however, not curtailing his right to have the decision tried before the courts.

#### *Requirements.*

Certified copy of home registration; legalized power of attorney (see form No. 8 B. Singer's Book of Forms); three copies of the mark; two electrotypes or wood cuts.

#### *Renewal.*

Protection for a registered trade mark ceases when application for renewal does not take place for the first time within ten years from the date of registration, and afterwards within ten years from the last renewal.

At least three months before the expiration of the before mentioned terms, the Registrar shall by registered letter inform the owner of the mark or his representative, that protection for the trade mark will cease, if notification of renewal does not take place in due time. Such letter shall be sent to the address in Denmark, which has been given by the party concerned.

If any person wishes to renew the registration, he shall deliver, or send in an application in writing drawn up in conformity with Sec. 3, accompanied by such a drawing as is therein prescribed, and ten Kroner, registration fee. If the mark has been registered for some other person than the one who demands the renewal, the right of the applicant to the mark shall also be proved.

The renewal shall be entered in the register as soon as possible, and such an acknowledgment as is prescribed in Sec. 3 with regard to application for registration of a new mark shall be communicated to the applicant.

If the Registrar finds the application defective, he shall refuse the renewal; as regards notification of the refusal which has taken place and complaint about the same, the provisions in Sec. 5 shall apply. (Sec. 9.)

(Sec. 5. If the registration is refused, notice thereof and also the reason for the refusal shall, conformably to Section 3, be sent in writing to the applicant. If the applicant considers the refusal unwarranted, he may within two months thereafter send in the decision of the Registrar to the Home Secretary, which proceeding, however, does not limit the right of the applicant to have the question decided by legal proceedings.)

#### *Offenses and Penalties.*

Whoever sells or offers for sale goods, which are to be consumed or re-sold in this country, on the labels or packing of which, either here or abroad, a description is affixed which either contains an incorrect statement as to the place of production of the goods, the nature, material, or method of production, or is of a nature to produce an erroneous conception in any of the said respects; or falsely states that the goods have been awarded prizes at exhibitions or have received certificates or recommendations from authorities or falsely states that the goods are, or have been, an object of a Danish patent, unless the statement was correct when the description was affixed, shall be fined 50 to 2,000 Kr. In case of repetition the punishment may, under aggravating circumstances, be changed to simple imprisonment.

Whoever, however, can satisfactorily prove ignorance of the incorrectness of the label, or that everything possible has been

done in order to ascertain the correctness of same, is exempt from punishment.

Further, whoever can prove that the goods have been received from some other person, living in Denmark, is exempt from punishment, unless at the time of receiving the goods there is evidence that the receiver was aware that a false description had been applied, or that with full knowledge of the fact the goods have been sold or offered for sale for consumption or re-sale in the country.

Whoever has sold goods for consumption or for re-sale in Denmark, the labels or covers of which contain any of the above named incorrect descriptions, shall, when the purchaser has not been advised of same at the time of the transaction, be liable to take the goods back and refund the purchase money, and at the same time, provided a fine or punishment in accordance with the before named stipulations has been inflicted, compensate the purchaser for any loss caused to him under the transaction, according to the ordinary rules of legislation. (Sec. 1.)

Whoever has been punished according to Section 1 shall, provided the goods offered are still in his possession or at his disposal, at the same time be bound to remove or correct the false description by affixing a distinct and durable supplementary description, or, if he desires to do so, export them, provided that the goods have not been produced in this country. (Sec. 2.)

The provisions in Sec. 1, regarding the use of indications on goods containing a wrongful description as to the place of production of the goods (incorrect name of place), shall not apply when the indication in question, according to the general understanding or custom in the trade, has become an indication of the nature of the goods and the method of production, etc., and not the place of production.

A description consisting of an indication of money, measure, or weight, is not considered as an indication of the place of production of the goods. The mere fact of another language being used than that of the country in which the goods are produced, or from where they are imported, is not sufficient to stamp the description as a false indication of the place of production of the goods, the decision in such case resting as well on the contents of the notification.

A description, which in itself must be regarded as a false indication of the place of production of the goods, shall not be regarded as such, when a distinct and durable supplementary description has been affixed giving information as to the real place of production of the goods. (Sec. 3.)

The same punishment as stipulated in Sec. 1 applies to whoever exports or conveys in transit butter which is not produced in Denmark, when a notification is affixed to the butter or its packing which either states that the butter is produced in Den-

mark, or contains the name of a Danish place; whoever can satisfactorily prove to have been ignorant of the false indication, and to have applied reasonable care in order to ascertain its correctness, is exempt from punishment. Butter which is offered for export or transit, which does not comply with the above named provisions will be seized and restored to the owner only after the incorrect description has been removed or corrected by an equally distinct and durable supplementary description, and after all expenses in connection with the seizure have been paid.

When a description as mentioned in the first part of this paragraph is affixed to butter or its packing, offered for export or transit, this fact must be expressly mentioned in the specification sent to the Custom Authorities under a fine of 10 to 200 Kr. This fine may, if desired, be fixed by the Custom Authorities.

When butter which is not produced in Denmark is exported in hermetically closed receptacles packed in this country, it is permitted to indicate Denmark or a place in Denmark as the packing place, in which case it is not necessary to notify this in the specification sent to the Custom Authorities.

Regarding the control, which is to be effected by the Custom Authorities for the maintenance of the provisions of this section, further instructions will be issued by the Custom Authorities.

Whoever by means of signs, advertisements, accounts, invoices or other business documents, states incorrectly that he has obtained awards at exhibitions or recommendations or certificates from authorities for goods produced or sold by him, or that he is owner of a Danish Patent or dealer in goods which are protected by a Danish Patent, will be punished by fines not exceeding 500 Kr. (Sec. 5.)

It is prohibited in Denmark to sell or offer for sale goods on which or on the labels or packings of which the mark mentioned in the Geneva Convention of August 22, 1864—"The Red Cross"—is affixed or a corresponding statement or denomination. For violation of this provision fines not exceeding 100 Kr. shall be inflicted.

The same penalty shall apply to the illegal use of the above named mark, statement or denomination on signs, advertisements, accounts, invoices, or other business documents.

The above provisions, however, do not apply to lawfully registered trade marks containing the Red Cross; renewal of the registration of such trade marks cannot, however, take place. (Sec. 6.)

Convictions under this law shall be dealt with as public police cases with the consultation of experts, provided the case should require it, and always whenever it is claimed by the accused.

Civil lawsuits in which a claim has been made in accordance with the regulations of this law, are treated as commercial cases.

The provisions of this law shall apply only when more severe punishment, in accordance with the general legislation, is not liable to be inflicted. (Sec. 7.)

#### *Assignments.*

A trade mark when registered can only be assigned in connection with the good will of the business.

#### *Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The law prohibits the sale or offering for sale of goods bearing a false indication of origin. The law also prohibits the fraudulent application of a trade mark registered in Denmark or of a trade name to goods for sale, or the offering for sale of goods thus marked. Infringements of the law are generally treated as public police matters and entail public prosecution. Therefore no expense is incurred by an injured party, unless he claims damages, in which case a private prosecution might be necessary. In the event of a case of infringement having escaped the notice of the police a criminal prosecution would be commenced immediately upon receipt of a notice given by the injured party or by their State's Legation or Consular Representative. The cost of prosecution would be considerably less than in the United States or England.

Marking Goods: "Indregistreret Varemærke."

#### *Procedure and Appeal.*

Court in Copenhagen.

The suits are entered at the Maritime and Commercial Court. The Court consists of a permanent President, Vice-President, four commercial and nautical men, citizens of the city of Copenhagen; they are elected for a period of four or five years.

In trade mark cases the President or Vice-President and four of the commercial members sit. If the suit is below 200 kroner only two of the commercial members are needed, and if the defendant is not present either the President or Vice-President may pass sentence alone. Before the suit is entered at the court the case comes up before the Court of Conciliation, consisting of two commercial members. If a settlement cannot be made the case is referred to the court, and written arguments are filed.

After the preparation of the case the trial takes place, which is held orally. The court renders a decision. The decision rendered by the Maritime and Commercial Court may be appealed to the Supreme Court in sixty days.



*Supreme Court.*

The Supreme Court has its seat in Copenhagen and it consists of Lord Chief Justice and twelve associate Justices. Before the Supreme Court both parties are represented by lawyers and the entire proceeding is oral. All suits where over 200 kroner is involved can be appealed to the Supreme Court.

*The Police Court.*

The Police Court in Copenhagen consists of three judges who are appointed for life. In all cases where the penalty does not exceed a fine of 40 kroner one judge may pass sentence.

In all Police Court cases the suit must be filed with the Director of Police, who, in turn, turns over the investigation to the police. The police make an examination and report to the Director. If the complaint is well founded the Director sends the case to the Criminal and Police Court. One judge conducts the examination of the case until the records are closed. If the complaint is groundless the Director may dismiss the case. Appeal may be taken from the Director to the Minister of Justice, whose decision is final.

*Priority of Use.*

By recent amendment to the law providing for the registration of trade marks in Denmark, a provision has been added to the effect, that where registration of a trade mark has been refused upon the ground that the mark in question has already been registered in the name of another party, an application may be made to the court by the party aggrieved, and if, upon such application, he can show that he was the first user of the mark, which has been wrongfully appropriated by the other party, a decree may be made directing registration of the mark in the name of the applicant and awarding to him its exclusive use in the same manner in which he was entitled to the use thereof at the time the mark was registered by the other party. Such proceedings, however, must be begun within one year after the first registration of the mark has been announced in the Trade Mark Journal.

## DECISIONS.

*Words and Design Trade Marks.*

Under date of August 10, 1906, the Commercial Court of Copenhagen, announced the principle that a word trade mark, associated with a design, could not be safely infringed by the use of the word alone or in combination with a different design. The earlier trade mark consisted of the word "Diamant," in connection with other words, descriptive of the qualities of the petroleum to which it was applied, and associated with a design

made up of the representation of divergent rays of light about a black central background. The later mark contained the word "Diamant" in connection with the representation of a polished diamond. It was contended by the owner of the latter mark that by the use of the word, in connection with the design, and the registration thereof in that form, the earlier user had constituted the entire combination as his trade mark and could not therefore, object to the use of the word in an entirely different combination. It was held, however, that the law made no such distinction and that the earlier mark was entitled to protection against the use of that last registered. (*Mitteilungen vom Verband deutscher Patentanwälte*, 1907, p. 16.)

### *The Rights of a Foreigner.*

The Maritime and Commercial Court of Copenhagen has construed the provision of the Danish law that the mark of a foreigner shall not be protected in Denmark for a longer time nor in a greater degree than it is protected in his native country by the law of the latter. One of the sections of the Danish law of trade marks provides that a judgment of a competent court may be obtained authorizing the registration of a trade mark in Denmark in spite of the previous registration of the same mark by another, where it is made to appear that the earlier registration was wrongful. The question at issue was whether a citizen of Germany, whose trade mark law embodied no such remedy, could invoke the privilege of this section before the Danish courts. It will be remembered that in Germany the registration of a trade mark is conclusive of title, and that the right of the registrant is not subject to be questioned thereafter. The decision holds that a German may avail himself in Denmark of the advantage of this section and assert under it his right to registration of the mark over that of a prior registrant, and this in spite of the fact that the law of his own country awards to the German no such advantage. The court holds that the provisions of the International Convention are satisfied only when each country extends to the citizens of any other country in the Union, the same protection and the like remedies as it extends to its own citizens. (*La Propriété Industrielle*, 1907, p. 39.)

### *The International Convention.*

In a decision of the Mercantile and Commercial Court of Copenhagen upon the right of a foreigner to register a word trade mark in Denmark, the point involved being whether or not a word trade mark not entitled under the provisions of the Danish law to be registered in that country, might be there registered by a foreigner, a citizen of one of the countries to the International Convention, who had himself registered the mark

in his own country. The mark applied for was the word "Primus," which had formerly been registered by the applicants, a Swedish firm, in their own country. The Registrar refused registration, on the ground of the descriptive character of the mark. On appeal, the Mercantile and Commercial Court held that the mark should, under the circumstances of the case, be registered. The Supreme Court has now overruled that decision, holding,

"That the fact that a word mark has been registered in a foreign country belonging to the International Convention, does not give the owner of it the right to demand that the same mark be registered in Denmark without regard to the meaning and contents of the said word."

In other words, it would appear that so far as word trade marks are concerned, they must conform with the requirements of the Danish law in order to be registered in Denmark, irrespective of the view which any foreign country may take as to their registrability.

#### *Unfair Competition.*

The Supreme Court of Copenhagen has held that one Matell, registered and trading under the trade name "Matell & Co.," and who has placed upon the market cognac in bottles with labels very similar to those in use by the older house of Martell & Co., whose labels have been registered in Denmark under the trade mark registration law, is liable for infringement of the trade mark in question. The word "cognac," however, is nothing more than a generic designation of the article and no longer has the significance of a geographical term, and its use by the defendant was not, therefore, wrongful. (Martell & Co. vs. Matell, *Annales de la Prop., Ind.*, 1908, p. 77.)

By a judgment of the Supreme Court of Copenhagen in September, 1908, it was determined that the words "Swift's imperial extra family beef" could not be registered in Denmark, upon the application of a German firm, notwithstanding its registration in Germany. The words merely indicate the origin and nature of the goods and are not registrable under the Danish law, which permits the registration of word trade marks, only when they are invented words, or are printed in such distinctive form as to be considered figurative marks.

Registration of the mark was claimed under the provisions of the International Convention and the Commercial Court of Copenhagen, upon appeal from the Registrar, had decided that it was not so registrable, but this decision was overruled by the Supreme Court of Copenhagen, in the decision above cited. (Holttennielsen vs. Swift Packing Co., *Journal du Droit Int. Prive.*, 1909, p. 1185.)

A very late decision of the Maritime and Commercial Court of Copenhagen, now affirmed by the Supreme Court of Denmark, raises a novel point regarding the protection of trade marks. The word "taxamotor" was registered as a trade mark by a Copenhagen firm, which made use of it upon carriages that were kept by it for hire. Another firm put upon its carriages the word "taxameter," and a suit was instituted by the former firm for infringement of its trade mark. The latter firm contended that a Danish trade mark only covered the use of the mark on goods offered for sale, but the court named held that the words "offered for sale" in the trade mark act also covered the offering of the goods for hire, and that the offense complained of was an infringement of the registered trade mark.

#### *Trade Mark Infringements.*

The report of a decision of the Supreme Court of Denmark, in a prosecution for trade mark infringement, illustrates the character of the remedies available in that country in such cases, as well as the facts upon which such prosecutions may be maintained.

A German firm, a prominent part of whose name was the word and initials "J. A. John," had registered in that country the word "Voll dampf" for washing machines. The defendant sold the washing machines manufactured by the German firm in Denmark under this trade mark. After handling the machines for some two or three years, he organized a joint stock company under the name of "John," most of the capital stock in which belonged to him and of which he was the director and manager. The company thereupon took over his business in the sale of washing machines and began to sell a machine made in Copenhagen and similar to the German product. These machines were marked with a metal plate, bearing the trade mark "Dansk Ful damp" and the name of the maker "John" in raised letters.

The German manufacturer complained both of the trade mark, which it was alleged might easily be mistaken for his own, and of the firm name "John" adopted and used by the defendant. The defendant contended that as he used the adjective "Dansk" or "Danish" before his trade mark, all possibility of deception was destroyed. In choosing the name of his joint stock company, the defendant claimed he had acted without any intention of imitating the name of the German firm, but had selected the name because it was the one by which he was called among his family and friends. The court, however, took the view that considering the identity in meaning of the two marks, in the German and Danish languages respectively, the similarity between them was such as to create a likelihood of confusion. Nor was the defendant justified in making use of the name "John" as that of his

corporation, when he knew that it was a part of the firm name in use by the German house.

The defendant was condemned to pay a heavy fine and to destroy the illegal marks in his possession. He was also given fourteen days within which to comply with the injunction, against further dealing in the machines bearing the infringing mark. (Shornstein, etc. Fabrik, J. A. John vs. Johan Peter Sorensen, No. 233, 1910.)

The Maritime and Commercial Court of Copenhagen has rendered a judgment upholding the validity of the trade mark "Grammophon" and enjoining its use in trespass upon the rights of the registered owner of the trade mark. The court considered the word distinctively an invented term, applied originally to goods of a particular kind, made under the inventor's patent, and the fact that the public applied the name to other and similar apparatus, put on the market at a later date by other manufacturers, cannot cause the word to be regarded in the law as a generic name for that class of goods. The registration was, therefore, held to be valid and the use by the defendant of the word in its trade name was enjoined, under Sec. 10 of the law of trade names, which provides that a trading style may not contain any reference to undertakings not connected with the actual business carried on. It was, therefore, held that the defendants were not entitled to use the name "Grammophon" in their trade name, nor to indicate under that name any goods handled by them not of the plaintiff's manufacture. (Int. Assn. for the Prot. of Ind. Prop., Vol. 13, p. 157.)

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## DOMINICAN REPUBLIC OR SANTO DOMINGO

This Republic is situated on the eastern coast of the island of Hayti. It has an area of about 18,000 square miles, and a population of about 600,000. The capital is St. Domingo. The railways are one between Santiago and Pto. Plata, the other between Sanchez and La Vega.

The principal articles exported are tobacco, sugar, coffee, cocoa, honey and wax, hides, bananas, mahogany and dyewood. The importations from Great Britain consist of cotton goods, linens, hosiery, woolens, cutlery, earthenware, hardware, East India rice, malt liquors, and recently, railway materials.

MONEY, WEIGHTS AND MEASURES—The law in force establishes the American gold dollar as the standard of value=100 cents=4s. 2d.

For weights and measures the metrical system has been adopted.

*Law.*

Law: May 16, 1907.

*Duration.*

The registration of a mark shall be valid for all goods for twenty years, at the termination of which it may be renewed, and so on successively. The registration shall be considered null and void should the owner of the registered mark make no use of it within a period of one year. (Art. 8.)

*What May Be Registered.*

Trade marks may be made up of anything not prohibited by this law and which may distinguish certain articles from others identical or similar but of different origin. Any name, signature or firm, letters or symbols may serve for this purpose only if used in a distinctive form. Trade marks may be used on the articles themselves or on the wrappings or packages which may contain them. (Art. 2.)

*Not Registrable.*

Registration shall be forbidden of such marks as contain: *First.* The coat of arms, medals, or insignia, either public, official, national, or foreign, except in the case of its due authorization previous to the passage of this law. *Second.* A name or firm that the petitioner may not use legally. *Third.* The indication of a determinate locality or establishment which is not that of the origin of the article, even though to such indication there be added or not a fictitious name or that of another. *Fourth.* Words, pictures or figures which involve offense to individuals or to public decorum. *Fifth.* The reproduction of any other mark already registered for an article of the same kind. *Sixth.* The entire or partial imitation of a mark already registered for a product of the same kind, which might lead the consumer into error or confusion. The possibility of error or confusion shall be considered as such whenever the differences between two marks can not be recognized, without due examination or comparison, in which event it is to be subject to the decision of the Minister of Improvements and Public Works, assisted by the members of the council. (Art. 6.)

*Mode of Application.*

In order to effect the registration it will be necessary that the person interested or his legal representative, apply to the Minister of Improvements and Public Works, application being made on properly stamped paper and accompanied by two or more copies or facsimiles of the trade mark, which must contain a detailed exposition of what constitutes the mark. The application should contain further a declaration of the kind of in-

dustry or business to which it is assigned for use, the vocation of the petitioner, and his place of residence. (Art. 4.)

The Chief Clerk of the Ministry of Improvements and Public Works shall certify each one of the models or copies, the day and hour upon which they are received, and, in case of the registration being ordered, will deposit one of said copies in the archives of the ministry and will deliver one to the interested person together with the certificate of registration duly numbered. There shall be published in the *Gaceta Oficial* the certificate of registration which shall contain the characteristic features of the trade mark, copied from the declaration required by Art. 4 (Art. 5.)

#### *Assignments.*

The mark can only be transferred with the industry of the product or the business for which it was adopted, due annotation being made in the registration, in consideration of authentic documents. A like annotation shall be made, if, once the firms changed, the trade mark should still exist. In both cases the publication of the same shall be necessary. (Art. 9.)

#### *Infringement and Penalties.*

A fine of \$100, gold, to be turned into the Treasury, shall be imposed upon: First, anyone who uses the legal mark of another person. Second, anyone who reproduces, in its entirety or in part, in any way whatsoever, and without the consent of the owner or of his legal representative, any registered and published trade mark. Third, anyone who imitates a trade mark in such a way as to deceive the consumer. Fourth, anyone who uses such imitated mark. Fifth, anyone who sells or offers for sale articles which display an imitated trade mark, provided that he cannot justify the manner of its derivation. Sixth, anyone who makes use in his products of a commercial name or that of a firm which does not belong to him, whether it constitutes or not a part of a registered mark. To determine such imitation as is alluded to in numbers 4 to 6 inclusive, of this article, it is not necessary that the similarity of the mark be complete; it will be sufficient that there be a possibility of error or confusion, in accordance with the exposition of number 6 of Art. 8. Usurpation of a commercial name or that of a firm, treated in number 6 of the present article, will be considered as existing whether the reproduction be complete or whether there be omissions, additions, or alterations, provided that there exist the same possibility of error or confusion on the part of the consumer. (Art. 10.)

A fine of \$50, gold, to be turned into the Treasury, shall be imposed upon: First, anyone who, without due authorization, shall use on a trade mark the coat-of-arms, genealogical insignia or insignia of a public official, national or foreign character; second, anyone who shall use trade marks which offend public decorum; third, anyone who shall use trade marks with indica-

tions of a locality or establishment not that of the place whence comes the merchandise or product, whether to this indication is united or not the name of another or a fictitious one; fourth, anyone who sells or offers for sale any article or merchandise or product which may bear marks such as indicated in numbers 1, 2 and 3 of this article, provided he can not justify the manner of its derivation; fifth, anyone who shall use a trade mark containing anything personally offensive or anyone who sells or offers for sale articles which display such marks. (Art. 11.)

Marking Goods: "Marca Registrada."

*Comment on the Trade Mark Law.*

The Dominican Republic has put in effect a trade mark law, the first that this country has had for the protection of this species of property. Although the country has been a member of the International Union for the Protection of Industrial Property since 1890, and although its constitution recognizes and guarantees property rights in trade marks, there has been no law for the registration of marks until that recently enacted and which went into effect on May 16, 1907. The statute now enacted makes the title to a trade mark dependent entirely upon registration, there being no provision in it for recognizing priority of use or enforcing the rights of a prior user. In this respect the law has the objectionable feature that is common to trade mark laws of the Spanish-American countries.

*Restrictions Upon Proprietary Remedies.*

Under date of June 20, 1906, the statute was enacted which became operative on January 1, 1907. This law provides that pharmaceutical preparations coming from foreign countries must comply with certain formalities, and obtain a grant of the privileges of sale in this Republic. An application for this purpose, with specimens of the medicines, must be filed with the Superior Council. After examination a report is made to the Superior Council, upon which authorization to sell the product will be either granted or refused. Of this decision, the custom house officers of the Republic are notified and preparations not authorized under the statute will be forbidden importation.

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## DUTCH EAST INDIES

### JAVA

The area of Java has been computed to be 51,100 square miles.

The population of Java and Madura in 1900 was 28,746,688.

The principal product of the island is sugar (1,046,691 tons in 1906).



The sugar from Java was exported to the following countries in 1905-6: Europe, 9,372 tons; U. S. of America, 404,521 tons; Australia, 17,959 tons; China, 147,165 tons; Japan, 129,198 tons; India, 86,267 tons; other countries, 93,443 tons. Total, 887,925 tons.

The tea export reached 27,517,615 pounds in 1910. The cultivation of cocoa is gradually extending. Here are also petroleum springs, possessed by the Dordrecht Petroleum Company; one refinery is at Sourabaya, the other at Samarang, and the Company has now erected a factory at Blora for the preparation of the various articles produced from the refuse, such as paraffin, ceresine, stearine, candles, etc., and have also erected a second refinery at Samarang.

The following are the principal articles of import: Cotton and woolen goods, haberdashery and mercury, provisions, earthenware, fish, butter, flour, rice, coals, petroleum, brandy, gin, wines, beer, liquors (spirits), champagne, mineral waters and matches.

The principal articles of export are sugar, coffee, rice, arrack, rattans, hides, nutmegs, tobacco, indigo, gum damar, kapok india-rubber, tea, tin, cinchona bark, quinine, gutta-percha, mace, pepper, coprah, cocoa and tapioca.

The trade in mother-of-pearl and shells is considerable, Macassar being the place of sale.

The monetary unit of the Dutch East Indies is the Dutch florin=100 cents=1s. 8d. (about) 40 cents United States.

WEIGHTS AND MEASURES—The metrical system is in force.

#### *Law.*

Law: 9th of November, 1893, as amended by the Law of the 31st of May, 1905. This law applies to all the islands of the group.)

#### *Duration.*

Twenty years; may be renewed before the expiration of the twenty years for a similar term.

#### *Requirements and Mode of Application.*

Registration must be applied for at the branch office of the Industrial Property Office at Batavia.

Power of attorney (no legalization). One power can be used for several applications filed at the same time. When the power is signed "pro procura," proof must be shown to the effect that the proxy is authorized to sign for this purpose.

Ten copies of the mark.

Electrotype measuring in length and width not under 1.5 centimetres and not exceeding 10 centimetres. This electrotype is

used for the publication of the registration in the "Javasche Courant" (Official Gazette).

Description of the mark and a statement of the goods for which it is to be registered, and also the manner in which the mark is used, and whether a claim is made for its use in a particular color or colors. When such claim for a color or colors is made, twenty copies of the specimen is required.

A statement of the full name, occupation and postoffice address of the applicant is necessary.

The formalities and the procedure, etc., are substantially the same as in Holland, with the exception that in Dutch East Indies an appeal from the refusal by the Registrar must be lodged within a period of three months, and that there is no appeal from the decision of the "Raad van Justitie" to a higher court.

#### *General Information.*

Classes of goods, which necessitate registration in each class separately, do not exist in Dutch East Indies. It is therefore possible to register a mark for a great number of goods by one single application, but it is advisable to divide them into groups so as to obtain broad protection. The mark can only be registered in respect of the goods for which it is practically used, and not for goods which the applicant intends to use later on. If the applicant's name, occupation or any printed matter on the mark gives rise to the supposition that the applicant does not deal in the goods mentioned in the application, the Registrar may refuse registration for those goods that do not fall under applicant's business.

A mark composed of several parts may be protected by one single registration.

#### *Assignments.*

For registering an assignment it is absolutely necessary that the good will and business of the original proprietor of the trade mark shall also be assigned to the subsequent proprietor. For assignment the following documents are necessary:

Power of attorney (no legalization).

A copy of the assignment of the business of the proprietor. This document must be executed before a notary and legalized before a Dutch Consul; it is not returned.

A certificate of transfer is also published in the official papers.

A mere change in the name of proprietorship can only be recorded in the Trade Marks Register by payment of the same government fees and by fulfilling the same formalities as for assignments.

Marking Goods: See Holland.

## EAST AFRICA PROTECTORATE

The British East Africa Protectorate is bounded on the north by the river Juba and Abyssinia; on the south by German territory; and on the west by the Uganda Protectorate, the eastern boundary of which is a line drawn from the eastern shore of Lake Victoria to Mount Elgon, and from thence up the Turkwell River to Lake Rudolph. The area is about 200,000 square miles, with an estimated population of 4,000,000.

MONEY, WEIGHTS AND MEASURES—1 rupee (100 cents)=32 cents. Weights and measures same as Great Britain, with the following exception, the gisla (measure of caffre corn)=360 lbs. avoirdupois.

Under the Inventions and Designs Act owners of British trade marks may record such trade marks in East Africa Protectorate at the office of the Secretary of the Board of Trade at Mombasa.

### *Requirements.*

A certified copy of the British registration; four copies of the trade mark and power of attorney.

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## ECUADOR

The Republic of Ecuador is bounded on the north by Colombia, on the south by Peru, on the west by the Pacific Ocean, and on the east by Brazil. It has an area of 116,000 English square miles and a population, including the Indians, of 1,370,250.

The industry is mostly agricultural, the staple products being cocoa, sugar, coffee, hides, india rubber and ivory nuts. The country is possessed of great mineral resources, but these are undeveloped and the means of transport are entirely absent. Straw hats and plait are largely exported.

MONEY, WEIGHTS AND MEASURES—The monetary unit employed in the tariff is the Sucre=100 centavos, actual value about 1s. 10d.=United States 44 cents. For weights and measures, Ecuador has adopted the metrical system.

### *Law.*

Law of October 22, 1899; October 9, 1901; October 28, 1908, and Presidential Decrees No. 2064 of May 4, 1909.

### *Duration.*

Registration of a trade mark is for a period of twenty years from the date of application, with the privilege of renewal for a similar period each time it expires. If a mark is not used on the articles for which it is registered within one year from registra-

tion, or if its use ceases for one year, the registration will lapse. In the case of foreign marks, use abroad complies with the above provision.

*What May Be Registered.*

Any sign, emblem, word, phrase, or special and characteristic designation used to distinguish articles and to denote their origin.

*Unregistrable.*

Letters, words, names, coats of arms, emblems, or insignia used by the nation of its municipalities, by foreign States or cities; the form or color of the article; general terms or expressions used to designate an article, or not having the character of novelty in relation to the article with which they are used; designations generally used to indicate the nature of the article, its class or quality; immoral expressions or designs; the name of a person, natural or legal, unless presented under a peculiar and distinctive form; a trade mark already registered to another, or similar to it, if intended for articles of the same nature; the name or portrait of a person without his consent, or that of his heirs, if he be deceased; a geographical name if it constitutes the essential part of the trade mark. (Art. 6.)

*Requirements.*

Power of attorney, signed before two witnesses and an Ecuador Consul.

Twenty facsimiles of the mark.

An electrotype of the mark, the length and breadth of which must be not less than 15 mm. ( $5/8$  in.) nor more than 100 mm. ( $3\ 15/16$  in.), height 20 mm. ( $13/16$  in.) to 30 mm. ( $1\ 3/16$  in.).

A receipt proving the payment of the prescribed fee.

A consent in writing, if the mark consists of the name or portrait of an individual. (Forms may be obtained from B. Singer's offices.)

*Opposition.*

Within three months from the publication of the application opposition to the registration may be entered by any one alleging that the trade mark belongs to him by reason of his having been the first to make public and notorious use of same within the five years last past, or that the mark is unregistrable under the terms of Article 6.

*Assignments.*

A trade mark may be inherited or transferred. It can only be transferred in connection with the industry to which the article for which it is intended belongs; and the sale of the industry, in the absence of a contrary stipulation, includes that of the trade

mark; a transfer of a registered trade mark is of no effect unless inscribed in the register.

The right of employing the registered marks is deemed personal property.

But the assignment of said right must be shown by an instrument recorded in the register.

If the instrument should be a private one it must be recognized as such before the registration is made.

The assignment shall be published in the official periodical.

If any of these requisites should be lacking the assignment will be without effect. (Art. 12.)

### *Infringements.*

The civil controversies that may arise by reason of trade marks will be settled and decided upon by the respective judges.

All infringements will be punished according to the penal code. (Art. 10.)

### *Penalties.*

Infringement of a registered trade mark may be punished by a fine of from five hundred to one thousand sucres, and imprisonment from six months to one year.

(1) Those who imitate a genuine trade mark.

(2) Those who sell or offer for sale, buy or have in their possession, imitated trade marks.

(3) Those who sell or offer for sale, buy or have in their possession, genuine marks without the consent of the owner, which is the presumption where there is protest on the part of the latter.

(4) Those who make use of imitated marks, placing them on articles which they make or on merchandise in which they deal, which is the presumption against him who has, sells or offers for sale said merchandise thus marked.

(5) They who sell or retail merchandise which bears an imitated mark.

(6) They who use on the articles which they make or on the merchandise in which they deal, trade marks which contain false indications in regard to the nature, quantity, quality, origin or source of either one or the other, or who state falsely that they have been awarded orders, medals, diplomas or distinction in exhibitions or in any other manner.

(7) They who, without imitating a mark, detach or separate it from one article in order to apply it to another.

(8) They who place their name, that of their establishment, or any word or sign upon a genuine mark.

(9) Those who refill with spurious products receptacles with a trade mark belonging to another; those who refill them with products which do not correspond with the genuine product as stated in the mark borne by the vessel; they who mix genuine

products which bear genuine marks with other products different or spurious; and they who sell, resell or have in their possession such products. This last is the presumption if such products are found in their stores, warehouses or shops. (Art. 38.)

The guilty party shall be sentenced\* to pay costs and damages to the party damaged. (Art. 39.)

All imitated marks, with the exception of one which shall be a part of the record, shall be destroyed by the Secretary in the presence of the judge and two witnesses. This shall be done after the experts render their report, if in same they establish that they are imitations. (Art. 40.)

Articles which bear imitated marks shall be sold at public auction provided that they are not harmful, in which case they shall be destroyed, and the proceeds shall be divided in equal parts between the treasury and the informant. If the mark was used on the article, the former shall first be destroyed. (Art. 41.)

The presumption is, that an article is offered for sale, if it is held in a warehouse, store or shop. (Art. 42.)

A genuine mark is one registered. An imitation mark is one not registered, the same as or similar to one registered. There is a similarity when both marks have one or more similar essential particulars, or when they can be confused at first sight, and when only by means of a careful examination it is possible to distinguish one from the other. (Art. 43.)

#### *Procedure.*

The Ministro de Hacienda shall send to each customs officer a copy of the registration of each foreign mark which has been or shall be registered with a copy of said mark. (Art. 47.)

When an attempt is made to import merchandise with imitation marks, the customs officer shall place them at the disposition of any justice of the peace, as well as the bills of lading, manifests and other documents which refer to them.

The omission of this duty will make him responsible for complicity in the offense, without prejudice to a fine of five hundred sucres, which the Ministro de Hacienda shall impose upon him. (Art. 48.)

The presumption is that an article bears an imitation mark, if it is imported from a country different from that named in the application, according to Article 16. (Art. 49.)

Every machine or instrument intended for the counterfeiting of marks shall be confiscated. (Art. 50.)

#### *The President of the Republic Decrees: (No. 2064).*

That those who effect registrations of trade marks according to the provisions of the law of October 28, 1908, now in force, shall

pay, once only, for the cost of the publications in the Registro Oficial in the form determined by Article 18 of the said law, the sum of 10 sucres for each mark which requires the said publications.—Communicate this.

Palace of the Government, in Quito, May 4, 1909.

Signature of the President of the Republic.

The Minister of Hacienda.

\_\_\_\_\_  
(Signed) BORJA.

## EGYPT

Although nominally a tributary state of Turkey, it is practically independent, being ruled over by Khedives, whose hereditary succession to the throne is recognized by an imperial firman of Turkey, and the succession guaranteed by the European Powers.

The total area of Egypt proper, excluding the Sudan, is over 400,000 square miles, and the population is about 11,000,000.

COMMERCE—The principal articles of export are cotton and cotton seed, grain and maize, beans, sugar and gum, rice and skins; and the imports chiefly cotton goods, coal, woolen stuffs, tobacco, indigo, timber, spun cotton, clothing and metals.

### TRADE MARKS

#### *Duration.*

Ten years; renewable.

The absence of any legal enactment relative to trade mark registrations, has not prevented the establishment of a bureau for the purpose. Since 1890 there has been established in the respective clerk's offices of the mixed courts of Alexandria, Cairo and Mansurah special registers for trade marks and designs. A certificate of registration with these courts is considered in any suit prima facie evidence of the right to the use of the mark so registered. The courts, in suits for infringement, apply the principles of law in force in the principal countries of Europe, recognizing the right to a trade mark as a species of property right to be protected, like any other property right, by an action for damages. This protection is accorded to trade marks whether registered or not, the right to it depending upon priority of use, the first user being held entitled to protection against the fraudulent use thereof by another. The registration is, therefore, of value as a matter of evidence alone. This, however, in so distant a country, is in an action for infringement a matter of the utmost importance, as the necessity for proving title by extraneous evidence may, where there is need of quick action, defeat entirely the right of the owner of the mark to relief. It is deemed desirable, although not necessary, to register at each of the courts above named.

The successful plaintiff in a suit for infringement may obtain not only an award of damages and costs, but an injunction against further infringement, an order for the destruction of the property bearing the infringing mark and an order directing the publication at the expense of the defendant of the judgment against him. (*La Propriété Industrielle*, 1903, p. 41; 1904, pp. 79-86.)

A case involving the right to trade mark protection in this country lately came before the Court of Mixed Appeal, which reversing the decision of the lower court, granted an injunction against the Pyramid Brewing Co., restraining them from the use of the trade mark "Munich Beer" registered in the name of another. The court took the view that the name was not generic but indicated the place of origin, its excellence being due to climatic conditions and the care with which it is made; that its use by the appellant on beer not produced in that city should not be permitted lest the public be deceived and appellee derive unlawful profits at the expense of the great popularity which the appellant's article had acquired under that name. (*Ch. Inst. of Pat. Agts.*, Vol. XXII, p. 215.)

The protection afforded by the Tribunal is gradually being built up by a series of decisions prohibiting infringements and unfair competition.

Trade marks in Egypt can be registered either in Cairo, Mansurah or Alexandria.

Triple registration is by no means essential to the validity of the Egyptian registration of a trade mark. Registration in any one of these three courts constitutes the fullest protection for entire Egypt. The triple registration is purely optional.

It is strongly advisable, though not absolutely necessary, to advertise every registration in the local papers which have been selected by the Tribunal to publish judicial announcements.

In an infringement suit it is important to prove that the proprietor of the trade mark has the right to his property. By publishing his trade mark he has given notice of ownership.

#### *Requirements.*

Power of attorney; one electrotype; six copies of the mark; name and address of the applicant; also statement of the goods for which the trade mark is used.

#### *The English Language Decreed to be Official in the Law Courts.*

By Khedivial Decree and with the consent of the fourteen Governments who, by the Treaty of 1876, guarantee the independence of the International Courts of Justice of Egypt (commonly called the "Mixed Tribunals"), the English language became official in those courts as and from the 18th of May, 1905.



As one of the results of the great prosperity of Egypt and of its expansion as a mining and manufacturing country, the protection of patents and trade marks there has taken large proportions. It would be well if American manufacturers would more generally register their marks there, the act in itself forming a good advertisement for their products and being calculated to lead to inquiries for their goods.

*Names of Localities in Egypt.*

The court of Alexandria holds that the name of a city, country or locality from which a product derives its reputation constitutes an indication of origin, and every manufacturer or producer in this city, country or locality has a right to make use of it. On the other hand, it is illegal to make use thereof for a product which is not of that origin. The name "Tuscan" applied to a cigar must, therefore, be considered an indication of origin, and the exclusive use thereof in Egypt must be confined to Italian products and subject to the authority of the Italian administration in Egypt. (Cacace vs. Dimitropoulo, *Annales de la Prop. Ind.*, 1910, p. 35.)

*Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The only law in force affecting the matter in question is the Penal Code of the Native Courts under which native Egyptians can be prosecuted for selling or keeping for sale goods bearing a false trade mark. Persons committing these offenses, who are entitled to the benefits of the Capitulations, can only be tried by the Consular Courts in accordance with the laws of their respective countries. A civil action may be brought before the Mixed Tribunals against anyone knowingly importing or selling goods bearing a counterfeit or imitated mark, at the suit of the owner of the mark. No official steps are taken to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods, except tobacco, to show the country or place of origin, or to denote that they are foreign.

Marking of Goods: "Marque Deposée or Registered Trade Mark."

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## ERITREA

Its area is about 247,300 square kilometres (95,400 square miles), with a population of about 450,000, of which the capital or chief town is Asmara, a hundred kilometres in the interior, with a population of about 25,000. Massowah has about 18,000.

MONEY, WEIGHTS AND MEASURES—Same as Italy.

*Law.*

Law: Royal Decrees of December 5, 1907; and Regulations (of March 5, 1908) for the Execution of the Decree of December 5, 1907. No. 846.

*Duration.*

Forever.

*Who May Apply.*

Whoever has acquired in Italy the right to the exclusive use of a trade mark according to the law of August 30, 1868 (No. 4577), has the right to protection of this mark in the territory of the colony of Eritrea through the administrative and judicial authorities, in accordance with the present provisions.

Merchants or manufacturers who have establishments in the the colony of Eritrea can obtain protection for the trade marks which they have adopted for their products or merchandise, by conforming to the present provisions.

*Mode of Application and Requirements.*

Whoever desires to obtain the protection of trade marks of which he has secured the exclusive use in Italy, shall file:

1st. An application on unstamped paper, stating his name, surname, the name of his father, his country of origin, and furnishing, the case allowing, the same statements in regard to his attorney, all in accordance with model A.

2nd. Two copies of the certificate of registration, of the description, if there be one, and of the declaration, issued by the Minister of Agriculture, Industry and Commerce of the Kingdom.

3rd. Two facsimiles of the mark.

4th. A power of attorney in legal form, when the application in not presented by the interested party.

5th. The receipt for the payment of the 40 lire mentioned under (d) of Article 8 of the Royal Decree of December 5, 1907, No. 846.

Whoever desires to obtain the protection of the trade marks named in the second paragraph of Article 1 of the Royal Decree of December 5, 1907, No. 846, shall file, in addition to the documents mentioned in Article 8 of the said Decree:

1st. An application drawn up according to Model B, on unstamped paper, containing:

(a) His name, surname, the name of his father, his country of origin, and, the case permitting, the same statement relative to his attorney;

(b) A succinct statement of the nature of the mark adopted (commercial name, figure, engraving, relief, etc.);

2nd. A power of attorney in the case stated under No. 4 of the preceding Article.

A detailed description of the figures and emblems is necessary, even when the mark consists of words written under a certain form and in a special combination, so that the mark thus formed consists not only in the words in question, but also in the figure resulting from their arrangement.

The declaration mentioned under (b) of the Royal Decree of December 5, 1907, No. 846, shall be drawn up as follows:

The mark filed by the undersigned consists in ..... (resumé of the description, if there is one, or designation of the mark, for example: commercial name, device, etc.); will be applied to (kind of articles and statement of the use which the applicant intends to make of the mark by applying it to the products of his manufacture, to the merchandise of his commercial enterprise, to the animals bred by him, etc.).

If the registration is effected through an attorney the declaration shall read thus: The mark, ....., filed by the undersigned in the name of ....., by virtue of his special power of attorney, and consisting in ....., will be applied by the said ..... to .....

Every application made for the purpose of obtaining in the Colony the protection of a trade mark shall be addressed to the Government of Eritrea.

The certificates of registration of marks shall be entered, in the original, in a special register, which shall be kept at the office of the Government.

A certified copy shall be issued to the party interested.

Any additional copies which may be requested shall be issued upon payment of 10 lire, which shall be proved by a receipt from the Colonial Treasury.

Trade marks can be registered by anyone, acting as an individual, persons acting as corporations, companies or legal persons of any sort, and even collectively by several persons.

#### *Infringements and Penalties.*

It is forbidden to counterfeit or imitate the form, the color or the arbitrary designation which, for the purpose of distinguishing it, have been placed upon a product, upon its wrapper or upon the receptacles which contain it, so as to produce confusion with the products of the same person or with those of another.

Without prejudice to more severe penalties laid down by the penal code for acts which are here named, a fine up to 2,000 lire shall be imposed, even when the act has not been done to the prejudice of third parties, on him:

1st. Who counterfeits a mark or distinctive sign and who knowingly makes use of same;

2nd. Who, without actually having counterfeited a mark or a distinctive sign, makes a fraudulent imitation of same, or who,

knowingly makes use of a counterfeited or fraudulently imitated mark or sign;

3rd. Who knowingly places in circulation, sells or imports from abroad, and for commercial use, products bearing a fraudulently counterfeited or imitated mark or sign;

4th. Who knowingly makes use of a mark, sign, or emblem bearing false statements calculated to lead the purchaser into error regarding the nature of the product, or who sells products provided with such marks, signs or emblems.

In case of a second offense the fine is from 200 to 4,000 lire. In any case it shall not be less than double the amount of the fine imposed for the preceding offense.

The counterfeited marks or signs, the instruments which have served for the fraud, as well as the products and articles bearing such counterfeit, shall be confiscated.

The above penalties shall be inflicted without prejudice to damages.

Whoever establishes his good faith in the acts named in Articles 12 and 13 shall be exempt from the penalty.

The interested party can in any case, even in civil cases, have recourse to the judicial authority;

1st. For the recovery of damages;

2nd. To enjoin the use of, the repetition of, or the later circulation of, false statements which injure him;

3rd. To enjoin the use of distinctive signs liable to cause confusion;

4th. To obtain the publication of the judgment in the press.

In the proceedings to recover damages, the claimant may relinquish his right to prove the amount of the damage suffered, and rely, for pecuniary relief, upon the estimate of the magistrate.

Regulations approved by decree of the Governor of the Colony shall specially provide more detailed provisions, the summary publication of the certificates issued by the Government, and everything which shall be necessary for the execution of the present provisions.

## FALKLAND ISLANDS

These islands, which are a Crown Colony of Great Britain, are situated in the South Atlantic, about 300 miles east of Magellan Straits.

The area of the East and West Falklands, South Georgia, and a few small islands is 7,500 square miles. They are maintained more as a naval station from their position, as the resources are only pastoral. The population in 1911 was estimated at 3,000.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Law.*

Law: Ordinance No. 2 of February 25, 1903.

*Duration.*

Fourteen years, and expires with registration of the British trade mark.

*To Whom Certificates of Registration May Be Granted.*

A certificate of registration of any new and original design or of any trade mark may be granted in this colony to any person who in the United Kingdom is the registered proprietor of such design or trade mark or to any person to whom all interest in such design or trade mark in respect of this colony has been assigned. (Sec. 2.)

*Requirements.*

Power of attorney and six copies of the mark.

## FIJI ISLANDS

The Fiji group of islands became British possessions in October, 1874. They number about 200, varying in size from Viti Levu and Vanua Levu, the two largest, each of which is about one-seventh the size of Ireland, to small islets not more than a mile in extent. Most of the smaller islands are surrounded by coral reefs. -The whole group is scattered over a space of 240 miles north and south by about 300 miles east and west. The total area, including the island of Rotuma, is 8,018 square miles.

The estimated population of the islands on the 31st of December, 1911, was 170,500, of whom 3,262 were Europeans.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Law.*

Law: Trade Mark Registration Ordinance, 1886, No. 4, and Rules of December 14, 1886.

*Duration.*

Seven years; renewable.

*What May Be Registered.*

A registrable trade mark must consist of or contain at least one of the following essential particulars:

1. The signature (or, in the case of an incorporated company, the name written in some particular and distinctive manner) of the firm applying for the registration, or of a predecessor in the business; or

2. An invented word or invented words; or
3. A word or words having no reference to the character or quality of the goods, and not being a geographical name; or
4. A mark which is otherwise of a distinctive character so as to be adapted to distinguish practically the goods of the proprietor of the trade mark from those of other firms.

*Requirements.*

Power of attorney; seven copies of the mark; electrotype; application accompanied by representations of trade marks must be advertised in "Gazette" and newspapers.

*Fees.*

On application 5s; on completion £1. Renewal fee £1.

*Assignments.*

Trade marks are assignable with good will. Sec. 3, Ord. IV., 1886. The Government fee for assignment is 10s.

*Classification.*

None.

Marking Goods: "Registered Trade Mark."

## FINLAND

The Grand Duchy of Finland, though belonging to Russia, has a constitution of its own, and makes its own laws, subject to veto or revision of the committee for the affairs of Finland in St. Petersburg.

Agriculture, forestry and dairy-farming are the chief resources of the Finlanders, and the produce of the country is generally nearly sufficient for their own maintenance, any deficiency in cereals being easily supplied by Russia. Most of the butter goes to England, and has much improved in quality of late. Forests cover about three-fifths of the country, besides which the interior lakes occupy immense tracts.

The total number of inhabitants in 1911 was 3,121,540, almost all of the Lutheran religion.

The granite in the Kalajoki district is beginning to make itself known in Scotland, judging by the quantities exported. It is of a gray color, and particularly fine grained. Considerable quantities are also sent to Russia annually.

The principal articles of export are wood, corn, etc., paper-pulp, iron and steel, paper, butter, fish, tar; and the imports consist of corn, etc., iron and steel, petroleum, coffee, sugar, cotton, fish, tobacco, coals, salt.

PORTS OF FINLAND—With regard to their commercial importance, the ports of Finland range as follows: Wiborg, Abo, Helsingfors, Kotka, Björneborg, Uleaborg, Hangö, Nickolaistad (Wasa). The above are the eight principal ports, according to the latest published statistics. The commerce of the remainder is insignificant.

MONEY, WEIGHTS AND MEASURES—The monetary unit in Finland is the mark, which is divided into 100 penni and is equal to  $9\frac{1}{2}$ d=20 cents United States. For weights and measures Finland has, in virtue of a decree dated December 22, 1886, adopted the metrical system.

*Law.*

Laws of February 11, 1889, Ordinance January 22, 1903.

*Duration.*

Ten years; renewable. Trade marks registered by foreigners are protected only so long as they are protected in the home country.

*Who May Apply.*

Whoever, in Finland, makes or sells products has the right to acquire by registration the exclusive right to make use of a special mark in order to distinguish his products in general commerce from those of others. (Art. 1.)

*What Cannot Be Registered.*

No mark shall be registered:

1. If the same or a similar one has been registered by a third person.
2. If the mark is composed entirely or substantially of figures, characters, letters or word, unless by their particular form or by certain arrangements or additions these signs constitute a figure mark, or also unless the words indicate the name or the firm of the depositor or his ownership.
3. If the mark is composed substantially or entirely of signs or emblems generally employed in a particular trade.
4. If the mark contains unlawfully the name of a third person or words which may be confounded therewith.
5. If the mark contains representations contrary to good morals, to public order, or if it is of a scandalous or manifestly deceptive character.
6. If the mark contains public arms or the insignia of chivalric orders. (Art. 4.)

*Mode of Application.*

A full statement of the name, address and calling of the petitioner.

If the depositor claims the mark only for certain products, a statement of what such products are.

The petition must be accompanied by:

Two specimens of the mark printed upon strong paper, 15 cm. long and 10 cm. wide.

Two blocks (cliches) of the same size suitable for the reproduction of the mark.

Receipt for the tax.

If more than one mark is applied for, the complete documents for each mark must be sent.

When a mark from abroad is offered, it must be accompanied by a certified showing of registry in the country of origin.

Foreign applicant for registration must appoint a representative domiciled in the Grand Duchy. (Art. 3.)

#### *Assignments.*

Transfer of the business in which the mark is used carries with it the transfer of the mark, unless otherwise expressly stipulated. (Art. 5.)

#### *Penalties.*

Wilful and fraudulent use of a mark or of a substantial imitation thereof, or sale of goods bearing such mark, is punishable by fine (50 to 1,000 marks), or imprisonment (for not more than one year).

The marks thus used may be destroyed even if this involves the destruction of the goods. (Art. 10.)

#### *Requirements.*

Certified copy of home registration, not to be legalized; legalized power of attorney; two copies of mark; two electrotypes or wood cuts. (Form of application may be obtained from B. Singer's offices.)

Marking Goods: "Varumärke."

## FRANCE

The area of France is 207,054 English square miles, and according to the census taken in March, 1911, the population was 40,250,310.

The form of government in France is that of a republic. The President of the Republic is the chief executive officer, and is elected every seven years by the votes of the two Chambers.

**MONEY**—The monetary unit of France is the franc=9 1/2d.=19 cents United States.

**WEIGHTS AND MEASURES**—The metrical system is in use.



*Law.*

Law of June 23d, 1857, amended by Law of 3d May, 1890.  
Decree 27 February, 1891.

*Term.*

The registration has effect for a period of fifteen years.

The property in a trade mark may always be preserved for a further term of fifteen years by new registration. (Art. 3.)

*What May Be Registered.*

Names of a distinctive form, denominations, emblems, impressions, stamps, seals, wood cuts, reliefs, letters, numbers, envelopes and all other signs serving to distinguish the products of a manufacture or articles of commerce. (Art. 1.)

The statutory definition of a mark is a very broad and general one, the particular determination of what may constitute a valid trade mark being left to the courts. The decisions hold that a valid trade mark may consist of the form of the wrapper, container, bottle or other receptacle, the metallic cap applied to the neck of a bottle, the colored band or string which decorates it, or colored threads woven into the border of a textile. These features of the goods are accepted as valid trade marks, even if employed without any special devices. (Pouillet, *Marques de Fabrique*, Fourth Ed., p. 39.)

A decision of the Court of Appeals of Paris emphasizes the worthlessness of registrations made by foreigners in that country, of marks not previously registered at home.

The registrants in this instance were German, and had registered in France without previous registration in their own country. It was held that the mark of a German citizen was not entitled to protection in France unless it had acquired the right to such protection in Germany, and as the right thereto depended upon registration and therefore had not been acquired by the applicant, the mark was without protection in France. (*Guterman & Co. vs. La Société "La Soie," La Propriété Industrielle*, 1905, p. 106.)

The ownership of a trade mark is acquired through priority of use of the mark, words or emblem, in any line of business or manufacture. It is independent of any registration or governmental permit. In other words, the merchant or manufacturer who first uses a word, mark or sign to designate his goods, or articles of his manufacture, has the right to interdict the use of said emblem or mark by any other person whatsoever, in the same line of business, and the burden of proof rests on him or them who may thereafter lay claim to the said word, mark or sign.

From the moment a trade mark is registered, as prescribed by

law, it must be respected, whether it is used or not, and any person, other than the owner, who uses it, claiming abandonment does it at his peril.

The title to a trade mark depends upon priority of use and is independent of any registration or governmental permit whatever. It has been the practice of the Patent Office to register a mark, in spite of a conflicting prior registration, where the applicant is able to show that the earlier registrant has abandoned the use of his mark.

Under the law of France the registration of a trade mark is merely declarative of property and not attributive; that is to say, no title is secured by the mere registration, the validity of the registration being dependent upon priority of use by the registrant. In a decision of the court of Lyons the plaintiff had registered in 1907, under the French law, the word "Forward" as a trade mark for bicycle brakes. The court said this registration was of no effect to give the plaintiff any title to the mark, if it were shown that it had been previously used by some one else. It appeared that the defendant had deposited with a local bureau in Lyons, eight days before the plaintiff's registration of the word under the trade mark law, a model of a bicycle brake bearing the mark "Forward." This registration, the court said, was only important as a declaration of the defendant's claim to the right to use the mark, and showed that he had already made such use, before the registration by the plaintiff. Secondly, it was not to the registration that we must look for the proof of the plaintiff's title, but to the question, which of the two parties had first made use of the mark in business. The evidence upon which the two parties relied, to show the extent and time of their use of the mark, is not important; only the conclusion of the court is of general interest. Finding that the complainant was prior in point of time to the defendant, in making use of the mark, the court said that he had shown a superior title and justified his registration of the trade mark, which was regular and valid. Accordingly, the court declared the plaintiff entitled to the exclusive use of the mark, and held that in applying the mark to bicycle brakes sold by him, the defendant had infringed upon the plaintiff's rights and had caused the plaintiff damages which he should be required to make good. The case being barren of any evidence upon which the amount of the damages sustained by the plaintiff could be determined, the court appointed a commission of three members, to take and state from the defendant's books and other evidences submitted, an account of the damages caused by the infringement, and to submit their report to the court for further action. (*Gonichon vs. Gattelet*, *Annales de la Prop. Ind.*, 1910, p. 140.)

The Court of Cusset in a decision holds that property in a trade mark is entirely independent of use of the mark and that

it is no defense to an action for infringement of a trade mark that the registrant did not use the mark upon any product of his, either at the time it was registered, or at the time the action was brought. The extent of the trade mark protection is determined entirely by the fact of registration and by nothing else. (*Cannone vs. Dauphin*, *Ann. de la Prop. Ind.*, 1909, p. 21.)

#### *Mode of Application.*

No person shall claim the exclusive property in a mark who has not filed at the record office of the tribunal of commerce to whose jurisdiction his place of residence belongs:

1. Three facsimiles of such mark.
2. The electrotype of this mark and a power.

In case of filing of several marks belonging to the same person, one single certificate will be given, but he must file as many facsimiles in triplicate and as many electros as there are distinct marks.

One of the facsimiles filed will be returned to the applicant bearing the visa of the record clerk and indicating the day and hour of filing.

The dimensions of electros shall not exceed twelve centimeters either way.

The electros will be returned to the parties interested after the official publication of trade marks by the Department of Commerce, Industry and Colonies. (Art. 2.)

#### *Penalties.*

Will be punished by a fine of from fifty francs to three thousand francs and by imprisonment of from three months to three years or by one of these penalties only:

1. Those who have counterfeited a trade mark or made use of a counterfeited trade mark.

2. Those who have fraudulently affixed on their products or the articles of their commerce a trade mark belonging to another party.

3. Those who have knowingly sold or offered for sale one or more products bearing trade mark either counterfeited or fraudulently affixed. (Art. 7.)

Will be punished by a fine of from fifty francs to two thousand francs and by imprisonment of from one month to one year or by one of these penalties only:

1. Those who without counterfeiting a trade mark have fraudulently imitated the same so nearly as to deceive a purchaser, or who have made use of a trade mark fraudulently imitated.

2. Those who have made use of a mark bearing indications of a kind to deceive a purchaser as to the nature of the products.

3. Those who have knowingly sold or offered for sale one or

more products bearing a trade mark fraudulently imitated or bearing indications of a kind to deceive a purchaser as to the nature of the products. (Art. 8.)

Will be punished by a fine of from fifty to one thousand francs and by imprisonment of from fifteen days to six months or by one of these penalties only:

1. Those who have not affixed on their products a mark declared to be compulsory.

2. Those who sold or offered for sale one or more products not bearing a mark declared to be compulsory for this special kind of products.

3. Those who have not observed the provisions of decrees rendered in execution of Article 1 of the present law. (Art. 9.)

#### *Jurisdiction.*

Civil suits referring to trade marks are to be brought before the Civil Tribunal and will be judged summarily.

In case of an action taken by way of a criminal suit, if the defendant in his defence raises questions relating to the property of the mark, the Criminal Police Tribunal will say whether an exception shall be made. (Art. 16.)

The property of a mark may through the intermediary of a notary have a detailed description taken with or without seizure of the products which he contends to be marked to his prejudice, and in non-compliance with the prescriptions of the present law, on the grounds of an ordinance issued by the President of the Civil Tribunal of First Instance or by the Justice of the Peace of the canton if there be no tribunal at the place where the products to be described or seized are located.

The ordinance is granted on simple request accompanied by the certificate of registration of the mark. It contains, if required, the appointment of an expert to assist the notary in his description.

If seizure is asked for the judge may require security from the applicant who must lodge same before seizure will be allowed.

Under penalty of annulment and of damages against the notary, copy of the ordinance and of the document stating that security, if any, has been lodged, must be left with the holders of the objects described or seized. (Art. 17.)

#### *General and Transient Provisions.*

No foreign products bearing either a mark or the name of a manufacturer resident in France, or the indication of the name or place of a French manufactory, may be imported into France for sale, storage or other purpose, and such products, if imported, may be seized at any place whatsoever, either on proceedings by the Custom House authorities, or on request of the Public Prosecutor or of the injured party.

In cases where seizure is operated by the Custom House author-

ities, the official report of seizure shall be immediately forwarded to the Public Prosecutor.

The time in which action provided by Article 18 must be taken under penalty of annulment of the seizure, either by the injured party or by the Public Prosecutor, is fixed at two months.

The provisions of Article 14 also apply to products seized in virtue of the present Article. (Art. 19.)

#### *Infringement.*

The civil court of Caen holds that, in a case of trade mark infringement, the excuse of good faith is never admissible in defense either of a criminal proceeding, or of a civil suit. Therefore, a printer who received from a third person, up to that time unknown to him, an order to reproduce, almost entirely, a certain trade mark, already known as that of a certain house, and who executed the order, cannot be heard in his own defense, to say that he acted in good faith, nor can he justify himself, by the assurance of the party giving the order, that the work was to be done with the consent and authorization of the owners of the mark. Under these circumstances the printer is jointly guilty with the party for whom the order was executed, and judgment should be given against both, without any right of recourse to the printer, over or against the party for whom he worked. (Annales de La Prop. Ind., 1910, p. 29.)

The same principal of the irrelevancy of the plea of good faith, by way of a defense to a suit for infringement, was also pronounced during the past year by the civil court of Pau, which held that the mere fact of infringement constituted a cause of action, without any need of inquiring into the good faith of him who is guilty of reproducing the mark, or who made use of the mark thus reproduced. (Mumm & Co. vs. Dudon et al., Annales de La Prop. Ind., 1910, p. 31.)

#### *Trade Secrets.*

The commercial court of Marseilles holds that an ex-employee, when he sets himself up in business in the same line as his former employer, must respect the commercial secrets and methods which became known to him by reason of his employment. He cannot, without rendering himself liable for unfair competition, offer to the customers of his old employer articles which were specialties with that house, and the preparation and sale of which involved the use of knowledge thus confidentially acquired. (Colliopulo vs. Joannides, Annales de La Prop. Ind., 1910, p. 31.)

#### DECISIONS.

##### *Trade Names Under the International Convention.*

A case of importance involving the right to protection of trade names without registration in countries which have become par-

ties to treaties similar to the International Convention for the Protection of Industrial Property, was decided by the Court of Appeals of Nimes, France. The plaintiffs in question were Italian citizens and were the owners of a trade mark which consisted essentially of their name "Barracco," used in a distinctive form but without the addition of any other sign or character whatever. It was held that under the treaties existing between France and Italy, the mark was entitled to protection irrespective of registration, and that although not registered in France until 1898, it had not remained during that time without protection and was entitled to protection as a trade name. (*Barracco Freres vs. Carenou et Tour, La Propriété Industrielle, 1905, p. 237.*)

#### *Protection of Names of Localities.*

A decision of the Tribunal of Lyons involved the use of the word "Munich," in controversy. This decision pronounced it unfair competition in trade to sell French beer in casks bearing the mark "Munich" and required the defendant to replace the mark with the designation "Process of Munich." (*La Propriété Industrielle, 1905, p. 232.*)

#### *False Indications of Origin.*

Under date of April 14, 1891, France, Great Britain, Spain, Switzerland and Tunis concluded a convention for the suppression of false marks of origin on goods, to which convention Portugal and Brazil have since become parties. This convention provides for the seizure on importation into any of these countries of goods bearing a mark falsely indicating that they are the product of any of the contracting states.

The French law on the subject provides that no foreign product which shall bear any name or trade mark, or any sign or indication whatsoever, calculated to induce the public to believe it was manufactured in France, or is of French origin, shall be admitted to entry at any custom house or bonded warehouse, or be allowed to be shipped, or to circulate through the country. This law, of recent years, was given by the customs authorities a rather liberal interpretation, but during the past twelve months a different spirit seems to have prevailed. Hence, it behooves exporters to be exceedingly careful and not to take any risks.

There are, however, a certain number of decisions which might help to form a clear idea of what is prohibited and what is permitted. It is prohibited, for instance, to use on a label, etc., the name of a French firm, whether or not the firm deals in the kind of merchandise in question. It is equally prohibited to place on any article a French proper name, such as "Lola," "Loubet," "Sardou," or the name of a French city or province without further indicating the origin of the merchandise. On the other hand,

the use of the French language to designate the nature of the imported products is not held necessarily a violation of the law. Moreover, the exporters may use French proper names, and in fact any labels they choose, provided they indicate clearly thereon the origin of the goods sold. This may be done by adding to the other marks, in plain and conspicuous letters, the words: "Importe des Etats-Unis d'Amerique" or "Fabrique aux Etats-Unis d'Amerique." But these words must be printed or stamped in the same manner as the rest of the label, and so as not to be easily removed or erased.

All the decisions in fact tend to protect the prospective purchaser against any possible deception, and in the light of the rulings made to this day the only absolutely safe course to follow for the American exporter is to avoid using any French marks or designations. If he decides otherwise, then let him indicate, in any unmistakable manner on the label or merchandise that the goods were produced or manufactured in the United States.

#### *Indications of Succession.*

The care with which the French law requires that facts of succession in business be shown in connection with the marking and sale of goods, is indicated by a decision of the Court of Lyons, under date of May 18, 1906. One Gallifet and another had been engaged in the manufacture of a liquor known as "Liqueur Gallifet." In 1880 they separated, the business being purchased by Primat, who continued it, subsequently selling to Vincent & Co. Gallifet engaged in business himself, afterward associating his son-in-law, Ballet, whom the latter finally succeeded to the business. In 1894, upon the suit of Gallifet, Primat was obliged to add to the old label of Gallifet & Co., which he was using, a statement that he was the successor of the former firm. In this suit Vincent & Co. were likewise obliged to indicate their succession in the same way, while Ballet was compelled to add to his labels a statement that he was doing business as the successor of Gallifet. (Vincent et Cie. c. Ballet-Gallifet, La France Judiciaire, June 23, 1906, p. 209.)

#### *The Nature of Trade Mark Rights.*

The right to a trade mark depends entirely upon use and where registration without use confers no title, the law of France secures to the registrant of a mark the title thereto irrespective of any use by him. In an action brought against the alleged infringer of a mark, the defense was interposed that the remedy to which it was applied had not complied with the requirements of law for the sale of remedies in France, and that the sale of it was therefore unauthorized. The Court of Appeal of Caen, under date of February 23, 1905, held that the property

in a trade mark is independent of the uses thereof and of the nature and composition of the product which it serves to distinguish. A trade mark, the court said, has an existence of its own distinct from the product upon which it is applied and does not fall into the public domain even by reason of the fact that the sale of that product is prohibited by the laws of the country, but remains, nevertheless, the property of the registrant, who always retains the right to prosecute for its infringement. It was, therefore, a matter of no importance whether or not the plaintiff's product was authorized to be sold under the laws of France.

It was further held that the use by the defendant of the plaintiff's mark in his catalogues and price lists and in advertisements constituted an infringement of the mark. Accordingly, the decision of the lower court awarding the sum of two hundred and fifty francs damages to the plaintiff was affirmed with costs. (*Champigny & Co. c. Foucault-Rosseau*, *Bulletin Officiel*, 1906, pp. 162, 183.)

A later decision of the Court of Cassation, under date of January 24, 1906, emphasized even more strongly the fact that the right to a trade mark in France is quite independent of any use thereof by the registrant. Plaintiff had registered in 1847 a trade mark for thread, among other kinds, sewing silk. The defendants claimed that the plaintiffs had abandoned the mark and had therefore forfeited their right to it so far as sewing silk was concerned, it being alleged that it had fallen into disuse by the plaintiffs for more than thirty years. The court said that a trade mark became the exclusive property of whoever registered it as required by law, that the right which arose from the registration was not extinguished by disuse of the mark, but that the property therein, conferred by the registration, gave to the registrant the right to punish the wrongful use of the mark by another, which right was dependent upon no other condition whatever in its exercise.

This right, therefore, could not be defeated by evidence that the registrant, either at the time of registration or at the time of beginning suit, did not manufacture the product to which this mark was applied. The defense of abandonment was held not to be made out.

The defendants furthermore claimed that they had used the mark in question since 1859, a period of more than thirty years, that their use thereof had been uninterrupted, peaceful, public and definite, that they had used it as the owners thereof for sewing silk and that they had thus acquired a right by prescription to the mark for these goods. Upon the question of whether the title to a mark could be thus acquired, the court expressed no opinion, but declared that no such right could be acquired in this case by reason of the prior registration of the



mark by the plaintiff. (Charbon-Waganay & Co. c. Vrau & Co. Bulletin Officiel, 1906, p. 334.)

*Association Trade Marks.*

The provisions of the United States trade mark law, which extends the benefits thereof to associations, as well as to persons, firms and corporations, gives interest to a decision of the Court of Appeals of Nimes in an action instituted by and in the name of an association for infringement of its trade mark.

It appears that an association of confectioners of Marseilles brought criminal proceedings for infringement of a trade mark adopted by the association. The court held that associations of the character of the plaintiff, having for their object the protection of the common interests of its members, could sustain an action only in the cases specifically provided by law, to-wit: in cases which involve the common interests of the associates, as for the collection of dues from members, or for injury to the common property.

The office of a trade mark the court defined to be, to indicate the origin of the merchandise to the purchaser and to protect the trade and reputation of the manufacturer of the goods. The interest which it represented was, therefore, private and personal to the manufacturer and not general to all the members of the association or profession. Moreover, in order to protect and maintain the property in the trade mark the mark must be commercially used. An association, not being capable of carrying on commerce itself, could not use and therefore could not lawfully hold, a trade mark. Not being able to maintain its title to the trade mark as an association, it was in no position to bring an action for infringement of the mark. The injury must be regarded as personal and the right of action, if any exists, belongs to the individual members of the association. (Syndicate, etc. vs. Corriol. La Propriété Industrielle, 1908, p. 59.)

*Liability of the Manufacturers of Counterfeit Labels.*

A Parisian court has decided that the manufacture of blocks, from which infringing marks may be printed, itself constitutes infringement of a trade mark and renders the lithographer liable as an infringer.

The case was one of misuse of the name "Menier" for chocolate. The well known house of that name which for many years had been engaged in the sale of cocoa and chocolate had long made the name "Menier" a characteristic element of all trade marks registered by it and had made the designation "Chocolate-Menier" well known as indicative of its goods.

Another party of the same name registered a trade mark, an essential feature of which was the words "Chocolate Menier." It appeared that he had never actually made use of the mark,

but had procured the manufacture of four blocks for purposes of registration, with the intention of actively engaging in business when he could raise the necessary capital. As to him the court made no question of his liability and, as to the manufacturer of the blocks, it is said that his good faith could not protect him in a purely civil action, since his act, irrespective of its intent, was an infringement of the plaintiff's trade mark. Accordingly, the defendants were jointly condemned to the payment of nominal damages and all the costs of the action. This case was appealed and affirmed, the Appellate Court saying that even if the defendant "Menier" had the undeniable right to make use of his own name, he could not make use of it in a way to prejudice the rights of the company of that name, by employing a mark which was only a counterfeit of that company's mark. (*Societe Menier vs. Menier, et al., Annales de la Prop. Ind., 1909, p. 23.*)

#### *Renewals.*

Where a trade mark legally registered in France was not renewed at the expiration of the term of fifteen years and after the termination of the first registration was registered and used by another party, it has been held that the mark of the first registrant no longer enjoys protection except within the territory where it has been in current use, in other words, the right of priority recognized by the French law is limited to that extent. In a case of this character, a mark claimed for furniture is not entitled to protection in favor of the first user in a city where the party has never been in business and where only rare sales have been made without the mark being prominently and commonly known as his. (*Guggenheim vs. David, Ann. de la Prop. Ind., 1909, p. 29.*)

#### *The Wrong of Refilling.*

By judgment of the Court of the Seine, it has been held that, where a dealer refills an empty bottle, bearing its original trade mark, with a brandy other than that formerly contained therein, and serves it from the bottle to his customers, he is guilty of infringement of the mark. The dealer sought to justify himself upon the ground that he merely filled the bottle as a matter of convenience; and, regardless of what kind of brandy his customers asked for, he served them all out of the one bottle. Nevertheless, the court said this fact did not excuse him, for his acts were a passing off of another brandy under the trade mark of the complainant. (*Guillan vs. Boyer, Bulletin Officiel de la Prop Ind., 1911, p. 39.*)

Upon the like facts, the Court of Beauvais has reached the same conclusion, declaring that the fraud was equivalent to a counterfeiting of the trade mark and was an application thereof to spurious goods. It was held, furthermore, that the mere

exposure of the bottles so refilled for sale constituted a putting of the product upon the market, within the meaning of the trade mark act. (*Societe St. Raphael vs. X*, Bulletin Officiel de la Prop. Ind., 1911, p. 40.)

The Civil Court of Carcassonne has applied the same principle, in the case of a defendant prosecuted for refilling beer bottles bearing the original trade marks. The court said, the fact that the bottles bearing the trade mark had been filled with beer of another manufacture and were in the defendant's warehouse made it unnecessary to inquire whether any had actually been sold, since they would undoubtedly be delivered to whomsoever should present himself as a purchaser. (*Lauer vs. Lassalle Castex*, Annales de la Prop. Ind., 1911, p. 136.)

### *The Name of a Patented Article.*

A French authority on Patents says, upon the expiration of a patent, the right to make and sell the patented article takes with it the right to use the name under which it has been known, provided the name was not employed as a trade mark, and be not so used by the later comer as to constitute unfair competition. Otherwise the monopoly of the patent would be indefinitely prolonged, since the articles manufactured in accordance with the invention would not be recognized in the market, if sold under a different name. When the name of the inventor himself enters into the designation of the article, the question is a difficult one, and in these cases, the court will not permit a third person to use the name except under conditions framed to prevent confusion.

It was held by the Court of Nancy, in 1854, that a designation under which a patented article had been known by the inventor, a designation drawn from the ordinary language and not containing the name of the inventor, became public property, together with the invention. It had also been held that when, by the act of the inventor himself, his name had become the essential part of the designation of a product, it likewise becomes public upon the expiration of the patent. On the other hand the use of the name of the inventor by another than the first maker, to designate a formerly patented article, if it cause confusion of the product with that of the original manufacturer, is unlawful. It seems to be the French rule that when used by another after expiration of the patent, the name of the inventor must be accompanied by descriptive words, indicating that the article is made according to his patent. The whole matter appears to turn upon the question, whether the mark or name in dispute is the necessary designation of the product; that is, the name by which the product has become known and been commonly identified, during the lifetime of the patent. If so, it

becomes public property. If not, no right to its use is gained by the expiration of the patent. (Pouillet, Brevets d'Invention, Third Ed.; Sec. 327.) (Pouillet Marques de Fabrique, Fourth Ed., Sec. 54.)

A decision of the Court of Paris in October, 1910, applies this principle in the case of a proper name, the further use of which it enjoined, upon the ground that it had not become, through any act of the inventor, the usual or common designation of the product. The use of the name by the defendant in that case was without any qualification or explanatory language, to show that the article was made by anyone other than the original maker thereof. (Leclanche & Co., vs. Nouvelles Galeries, Annales de la Prop. Ind., 1911, p. 121.)

#### *Unfair Competition.*

The Civil Court of Nevers has held that a trade name consisting of the words "Pastiles Valda" is infringed upon by the name "Pastiles genre Valda" or in other word "Pastiles of the Valda Type." It is held that the use of the mark in this way is likely to mislead a purchaser as to the origin and identity of the merchandise sold, and that such use of the name constitutes unfair competition. (La Defense de La Propriété Industrielle, 1908, p. 137.)

#### *Assignment.*

No transfer shall be valid as regards third parties until it has been registered at the office of the Secretary of the Prefecture of the department in which the deed was executed.

The registration of all deeds made in the department of the Seine, however, shall be effected at the National Office of Industrial Property.

The registration of transfers and of all other deeds making changes shall be made on the production and deposit of an authentic extract from the deed of transfer or change.

A copy of each entry of registration, together with the extract from the deed above mentioned, shall be forwarded by the Prefects to the Minister of Agriculture and Commerce within five days of the date of the entry.

#### *Classification of Merchandise.*

##### CLASS 1. AGRICULTURE AND HORTICULTURE.

Live stock. Wool. Forrage. Grain. Seeds. Fruits and Vegetables (fresh or dried). Trees, shrubs and flowers (cut or growing). Grafting. Licorice wood, etc.

##### CLASS 2. PINS, HOOKS AND NEEDLES.

##### CLASS 3. WEAPONS AND ORDNANCE.

Weapons and equipment for military use, for hunting, etc. Also ammunition and explosives.

## CLASS 4. SMOKERS' ARTICLES.

Cigars. Cigarettes. Tobacco. Pipes. Tinder boxes, etc.  
Not including cigarette papers, for which see Class 53.

## CLASS 5. NOTIONS.

Small toys and knick-knacks. Not including those provided for in Classes 12 and 44. Notions excepting those provided for in Classes 8 and 11. Goods of leather, shell, Celluloid, mother of pearl, etc. Brushes. Travelers' goods, etc. Not including buttons, for which see Class 55.

## CLASS 6. WOOD.

Seasoned lumber. Wood pulp. Wooden ware. Cooperage. Baskets. Wooden handles, stoppers, etc.

## CLASS 7. BEVERAGES.

Beer. Cider. Table waters. Malt ferments. Salts, etc., used for preparing beverages. Apparatus for home production of table waters. Not including articles provided for in Classes 10, 19, 21, 27, 45, 59, 60, 72, 73.

## CLASS 8. HOSIERY, CORSETS AND SUNDRIES.

Knitted goods. Stockings. Garters. Corsets. Corset covers. Corset stays. Buckles. Eyelets. Hooks and eyes. Hair pins, etc. (For other notions see Class 5.)

## CLASS 9. CANDLES AND TAPERS.

## CLASS 10. TEA, COFFEE AND SUBSTITUTES FOR THE SAME.

## CLASS 11. CANES AND UMBRELLAS.

Including the complete articles and also their mountings and trimmings.

## CLASS 12. RUBBER GOODS.

Crude rubber. Products for waterproofing cloth. Rubber goods, excepting those provided for in Classes 14, 29 and 42, but including rubber toys, rubber fabrics, elastic fabrics, etc.

## CLASS 13. VEHICLES, HARNESS, ETC.

Including bicycles and whips.

## CLASS 14. POTTERY AND GLASSWARE.

Including atomizers. Not including articles provided for in Classes 29 and 42.

## CLASS 15. HATS, MILLINERY AND NECKTIES.

Caps. Millinery goods. Feathers. Artificial flowers, etc. Not including ribbons for which see Class 63.

## CLASS 16. HEATING AND LIGHTING.

Including ovens, foot warmers, fuels and matches.

## CLASS 17. FOOTWEAR.

## CLASS 18. BUILDING MATERIALS.

Building stone. Marble. Granite, etc. Lime. Cement. Bricks. Tiles. Roofing materials. Not including lumbers for which see Class 6.

- CLASS 19. CHOCOLATES.  
Including cocoa, etc.
- CLASS 20. SHOE POLISHES AND LEATHER DRESSINGS.
- CLASS 21. PASTRY AND CONFECTIONERY.  
Including syrups and fruit juices.
- CLASS 22. PRESERVED FOODS.  
Including meats, fish and vegetables, canned or in jars.
- CLASS 23. COLORS, VARNISHES, WAXES, PYROGRAPHY, ETC.  
Including paints, driers, red lead, stove polish, pumice stone, sealing wax, paste, etc. Not including glue for which see Class 59.
- CLASS 24. CUTLERY.  
Including razor hones, etc.
- CLASS 25. HIDES AND PELTS.
- CLASS 26. LACES AND NETS.  
Including embroideries, veils, etc.
- CLASS 27. BRANDIES.
- CLASS 28. CLEANING AND POLISHING MATERIALS.  
Cleaning fluids, pastes and powders (excepting those provided for in Classes 20 and 23). Impregnated cleaning fabrics. Polishing papers and cloths, etc.
- CLASS 29. ELECTRICAL APPARATUS.  
Including insulators of gutta percha and other materials.
- CLASS 30. INKS.
- CLASS 31. FERTILIZERS.
- CLASS 32. COTTON THREAD.  
Including braids and tapes.
- CLASS 33. WOOLEN YARN.
- CLASS 34. LINEN THREAD.
- CLASS 35. SILK THREAD.  
Including silk tapes, artificial silk, etc.
- CLASS 36. MISCELLANEOUS THREAD.  
Including threads of hemp, ramie, etc. Also threads of mixed materials.
- CLASS 37. GLOVES.
- CLASS 38. CLOTHING AND FIGURES FOR DISPLAYING THE SAME.  
Including furs, underwear, gaiters, etc. Not including articles provided for in Classes 8, 15, 26, 55 and 63.
- CLASS 39. HOROLOGY, JEWELRY AND PLATE.  
Precious metals in ingots. Objects made from the precious metals. Precious stones. Pearls. Artificial gems. Not including jet ornaments, for which see Class 55.
- CLASS 40. LUBRICATING OIL AND GREASE.  
Including vaseline which is not perfumed or medicated.

## CLASS 41. VINEGAR AND TABLE OIL.

Including oil cakes.

## CLASS 42. SURGICAL INSTRUMENTS AND DRUGGISTS' SUNDRIES.

Including absorbent cotton, bandages, trusses, syringes, orthopedic apparatus, dental apparatus and supplies, vapor baths, sterilizing apparatus, nursing bottles.

## CLASS 43. MUSICAL INSTRUMENTS. AND INSTRUMENTS OF PRECISION.

Including physical and chemical apparatus, weights and measures, optical instruments, phonographs, phonographic discs, etc.

## CLASS 44. TOYS AND GAMES.

Not including articles provided for in Classes 5 and 12.

## CLASS 45. SPIRITUOUS LIQUORS.

Grain alcohol. Beverages containing alcohol and sugar, excepting as provided for in classes 7, 27, 72, 73.

## CLASS 46. BEDDING, FURNITURE AND FLOOR COVERINGS.

Including tapestries, window shades, ice boxes. Also including articles used in upholstery, horse hair, feathers, etc.

## CLASS 47. SEWING MACHINES.

Including plaiting machines. Also parts and accessories.

## CLASS 48. AGRICULTURAL MACHINERY.

Including dairy apparatus.

## CLASS 49. MISCELLANEOUS MACHINERY AND APPARATUS.

Including typewriters. Also including miscellaneous machinery not provided for in Classes 7, 29, 47, 48, 57. Also including accessories for machines coming under this classification.

## CLASS 50. METALLURGY.

Minerals. Metals in the form of ingots, bars, foil, etc., excepting precious metals for which see Class 39.

## CLASS 51. OBJECTS OF ART.

## CLASS 52. BOOKS AND PAPER GOODS.

Books. Pamphlets. Maps. Office Supplies. Paper, not including cigarette papers, for which see Class 53. Paper boxes. Cartons.

## CLASS 53. CIGARETTE PAPERS.

## CLASS 54. PERFUMERY.

Including perfumed pastes and powders, dentifrices, sachet powders, incense, etc. Not including soaps, for which see Class 64.

## CLASS 55. BUTTONS AND PASSEMENTERIE.

Buttons of all materials. Cords. Gold or silver laces, braids and threads.

## CLASS 56. FOOD PRODUCTS OF FLOUR.

Including macaroni, vermicelli, noodles, spaghetti, etc.

## CLASS 57. PHOTOGRAPHY, LITHOGRAPHY AND PRINTING.

Photographs. Picture postal cards. Calendars. Not including books, etc., provided for in Class 52. Photographic apparatus and supplies. Moving picture apparatus. Lithographic stones. Zinc plates. Electros, etc. Printing machinery.

## CLASS 58. FOOD PRODUCTS. MISCELLANEOUS.

Fresh, salted and smoked meats. Bread. Ginger bread. Mustard. Tapioca. Sugar. Milk. Cheese. Butter. Eggs. Animal foods, excepting as provided for in Class 1. Not including food products covered by Classes 1, 19, 21, 22, 41, 56, 59, 60.

## CLASS 59. CHEMICAL PRODUCTS.

Wine making, brewing, etc. Artificial phosphates. Gelatines. Glue. Starch. Ignition fuses. Insecticides, etc.

## CLASS 60. PHARMACEUTICAL PRODUCTS.

Including medicines, remedies, antiseptics, etc., of all sorts, excepting those covered by Class 61. Also including health foods.

## CLASS 61. VETERINARY REMEDIES.

## CLASS 62. TOOLS AND HARDWARE.

Including farming implements, mechanics' tools, plumbing goods, house furnishing goods, tinware, wood or metal garden furniture, automatic stoppers, filters with their accessories, etc. Not including articles provided for in Class 65.

## CLASS 63. RIBBONS.

## CLASS 64. SOAPS.

## CLASS 65. IRONWORKING AND LOCKSMITHING.

Iron work of all kinds. Greenhouses. Horseshoes. Horeshoe nails. Builders' hardware, including locks.

## CLASS 66. DYES. SIZING PREPARATIONS AND THE CLEANING OF FABRICS.

## CLASS 67. COTTON FABRICS.

## CLASS 68. WOOLEN FABRICS.

## CLASS 69. LINEN FABRICS.

## CLASS 70. SILK FABRICS.

## CLASS 71. MISCELLANEOUS FABRICS,

Including mixed goods, velours, etc.

## CLASS 72. WINES.

Including all wines, excepting those of Class 73.

## CLASS 73. EFFERVESCENT WINES.

Including champagnes and other effervescent wines.



## CLASS 74. MISCELLANEOUS PRODUCTS.

Including ropes and cords, fishing tackle, gymnastic apparatus, sporting goods, ignition tubes for explosion engines, cloth sacks, wiping cloths for machinery, celluloid products, not specifically covered in other classes, etc.

*Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

There is no general law in force prohibiting false marks of foreign origin, but only a law prohibiting false marks of French origin. Goods bearing a false indication of French origin are seized by the Customs on importation. The Decree of 15th of July, 1892, approves the Arrangement of Madrid of 1891, which enacts that all goods bearing a false indication of origin in which one of the contracting States (or a place situated therein) is indicated as the country or place of origin, shall be seized on importation. No direct action is, however, taken by the French authorities as regards the seizure of goods bearing false indications of foreign origin, but interested parties, advised by the Customs or by the Procurator of the Republic, have the right to effect seizure and to proceed before the courts. A foreigner being an interested party, could bring an action for damages for unfair competition. The cost of an action recently brought by a British manufacturer against an imitator of his mark is estimated to have been 300 francs, plus solicitor's fees. No direct steps are taken by the French authorities to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods, except as regards foreign preserved sardines, vegetables, plums and prunes, which must bear an indication of the country of origin. Foreign goods of any kind bearing an indication likely to suggest French origin must, to avoid seizure, be marked with the name of the country of origin.

Marking Goods: "Marque Déposée."

*French Colonies and Protectorates.*

A trade mark registration in France extends to all the Colonies but not to any Protectorates.

The following is a list of the French Colonies:

French West Africa (Senegal, French Guinea, Ivory Coast, Dahomey, Upper Senegal and Niger). French Kongo, Madagascar and dependencies. Mavotta and Comoro, Reunion, French Coast of Somali. Indo-China (Cochin China, Cambodia, Anam, Tongking). French Indian Establishment. New Caledonia. French Establishment of Oceanica. Guadeloupe. Martinique. St. Pierre and Miquelon. French Guiana.

## GAMBIA

The area of the Colony and Protectorate is computed at 4,000 square miles. The estimated population in 1911 (including the Protectorate) was 210,530 (Colony only 8,807).

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

### *Law.*

Trade Marks Ordinance, 1900, No. 6; Ordinance to amend above Ordinance No. 14, 1902, C. I., Rules under Section 40 of Act of 1900. Vide "Government Gazette," April 30, 1901.

### *Duration.*

Fourteen years; renewable.

### *What May Be Registered.*

A registrable trade mark must consist of or contain at least one of the following essential particulars:

1. The signature (or, in the case of an incorporated company, the name written in some particular and distinctive manner), of the firm applying for the registration, or of a predecessor in the business; or
2. An invented word or invented words; or
3. A word or words having no reference to the character or quality of the goods, and not being a geographical name; or
4. A mark which is otherwise of a distinctive character so as to be adapted to distinguish practically the goods of the proprietor of the trade mark from those of other firms.

Substantially the same as British Act of 1888.

### *Requirements.*

Power of attorney; three facsimiles of the mark; full statement of the goods for which same is to be used, as well as applicant's address; and one electrotype.

### *Government Fees.*

On application for registration of trade mark for one or more articles included in one class, 10s; on completion £2. Renewal fee £1.

### *Classification.*

Same as Great Britain.

### *Assignments.*

A trade mark is assignable with the good will of the business.

## GERMANY

The Empire of Germany comprises a population of 64,710,172 (Dec. 1st, 1910).

The Empire consists of the following States, viz: The Kingdoms of Prussia, Bavaria, Saxony and Wurttemberg; the Grand Duchies of Baden, Mecklenburg Schwerin, Hesse, Oldenburg, Saxe-Weimar and Mecklenburg Strelitz; the Duchies of Brunswick, Saxe Meiningen, Anhalt, Saxe Coburg Gotha and Saxe Altenburg; the Principalities of Waldeck Lippe, Schwarzburg Rudolstadt, Schwarzburg Sondershausen, Reuss Schleiz, Schaumburg Lippe, Reuss Griez; the Free Towns of Hamburg, Lubeck, Bremen, and the Reichsland of Alsace-Lorraine.

The Constitution of the Empire vests the supreme power in the Emperor, and the Government consists of the Federal Council or Bundesrath and the Diet or Reichstag, formed by members elected from each of the States. The various States of the Empire have each its separate government, making its own laws and controlling its own revenue and expenditure, except all financial matters appertaining to the Empire, such as the expenditure on the army, which has to be voted by the Reichstag.

**MONEY**—The monetary unit of Germany is the Reichsmark of 100 pfennige=1s.=24 cents United States.

**WEIGHTS AND MEASURES**.—Germany has adopted the metrical system.

*Law.*

The first uniform law on trade marks for the Empire of Germany was that of November 30, 1874, which, however, proved to be defective, and was replaced twenty years later by the present Law of May 12, 1894 (supplemented by "regulations to carry the same into effect").

*Term.*

Ten years; renewable.

It is advisable to effect re-registration upon the anniversary of the original registration as the new period of ten years will begin to run from the date of the renewed application.

Notice of cancellation on account of failure to renew is given to the proprietor of the mark by the Trade Mark Branch of the Patent Office. If 10 marks fine besides the renewal fee of 10 marks, or 20 marks altogether, be paid within one month of the delivery of the notice, then the renewal will be considered to have been properly made on the day of the expiration of the former registration. But even after this time, the expired mark can nevertheless be again registered afresh by an entirely new application.

Under the German law a trade mark cancelled by reason of the expiration of the period of ten years for which registration

can be made, cannot be registered within two years thereafter without the consent of the original registrant. This practically gives to the first registrant a period of two years within which he may renew the registration, and protects him against the appropriation of his mark by another during that time, although after cancellation of the mark, no remedies under the statute are available to its owner. (Art. 4.)

#### *Who May Register.*

Anyone wishing to employ a trade mark in connection with his business to distinguish his goods from those of others, may make application for the entry of such mark in the Trade Mark Register. (Art. 1.)

The right to protection is secured by registration only, and is independent of any priority in the use. The first user who neglects to have his mark registered in Germany is not in position to prevent the registration thereof for a similar goods by another firm; nor can he prevent the use thereof by registrant, or ask for cancellation of the registration after it is made. The registrant of a trade mark can prevent the prior user of the mark from using the same in Germany, and may have goods bearing that mark seized upon importation into Germany.

The Patent Office will refuse registration of a trade mark upon an application filed in Germany before applicant has actually secured registration in his home country.

#### *The Following Can Not Be Registered as Trade Marks.*

1. Marks consisting exclusively of figures, letters or words descriptive of the manner, time and place of production, of the purpose, of the price, or of the proportions by weight or volume of the goods.

2. Marks containing home or foreign state coats of arms, the coat of arms of a German territory, of a German community or other parochial union.

3. Marks containing representations calculated to cause annoyance, or allegations evidently misleading and involving the risk of deception.

#### *Mode of Application.*

The application for registration must be made at the Patent Office, Berlin. A written request for registration of a trade mark is signed by the applicant or his agent, containing:

1. The name, address, profession and establishment of the applicant.

2. A full description of the mark, and this is especially desirable when the mark consists of a word, as, in this case, it should be stated that the said word can be printed or otherwise shown in any desired characters, protection of the word as

spoken being alone desired; statement of the class of goods upon which the mark is to be used and a request for the registration of the mark. The request should be accompanied by a representation of the mark and, if necessary, description of the goods and models or specimens of the goods bearing the mark.

The Patent Office examines whether the earlier marks which could be confused with the new application have already been registered or registration for such applied for. If existing trade marks are discovered the proprietors of the same are advised of the existence of the new application and opportunity is given to them to file opposition against the registration of the new trade mark. If no opposition is raised the new mark is registered without any further difficulty. Simultaneous with the communication to the proprietors of similar trade marks the Patent Office advises the applicant that proceedings according to Article 5 of the law concerning trade marks have commenced. The applicant upon receipt of such notice can abandon or maintain the application according to desire, and has, moreover the right to file an argument setting forth the differences which distinguish his mark from those opposed. For this purpose a term of four weeks is allowed by the Patent Office. When opposition is raised by the proprietor of the similar trade mark the Patent Office, decides whether said opposition is justifiable and the rejection of the new application consequently necessary. Should the application be rejected the applicant can appeal to a higher department upon payment of a fee of M. 20. The application is then again examined by the Appeal Department to ascertain whether an essentially misleading similarity of the marks in question exists and decides accordingly.

When an application is not accepted M. 20 of the Government fee of M. 30.- is refunded so that M. 10.- remain in the treasury of the Patent Office to cover the expenses of the examination.

When the Patent Office has decided that a trade mark application is acceptable, the applicant is requested to file an electrotype of the mark, not exceeding cm. 6.5 in length and breadth, within a prescribed term. For exceptional cases where clearness renders it necessary a larger electrotype would be acceptable. The electrotype must remain in the possession of the Patent Office as long as the protection exists. A certificate of the registration containing a print of the trade mark is issued to the applicant. The trade mark is moreover, published in the Imperial Gazette (Reichsanzeiger) and in the Trade Marks Journal.

#### *Requirements.*

Certified copy of home registration legalized by a German Consul; power of attorney; five copies of mark and one electrotype. (Form for application may be obtained from B. Singer's offices.)

*Assignments.*

The right accruing from the application for registration, or from the registration of a trade mark, descends to the heirs and may be transferred to others by agreement, or decree in case of death. The right can, however, only be transferred to others together with the business to which the trade mark belongs. The transfer will be noted in the Register on the application of the legal successor, on the consent of the person entitled to the mark being proved. If the person entitled to the mark is dead, proof of the legality of the succession must be furnished.

Until the transfer has been noted in the Register, the legal successor cannot substantiate his claim to the rights accruing from the registration of the trade mark.

Notices and decisions of the Patent Office, which have to be sent to the proprietor of the mark, must always be addressed to the registered proprietor. If the proprietor is dead, the Patent Office may according to its own discretion, consider the communication as having been duly effected, or take steps to discover the heirs, in order to communicate with them. (Art. 7.)

*Infringements and Penalties.*

Any person who, knowingly or through gross negligence, shall wrongfully apply to goods or to their packing or wrappers, or to advertisements, price lists, business letters, recommendations, bills or the like, the name or the firm name of another, or a trade mark protected according to this law, or shall deal in or offer for sale goods, thus wrongfully designated is bound to indemnify the injured party.

If the deed has been committed knowingly, the perpetrator will be punished by a fine not less than one hundred and fifty marks and not exceeding five thousand marks or by imprisonment not exceeding six months. The prosecution only takes place on petition. The withdrawal of the petition is admissible.

Any person who, for the purpose of deceiving, shall apply to goods or their packing or wrappers, or to advertisements, price lists, business letters, recommendations, bills or the like, a design current in the branch as the mark of another person for similar goods, without the permission of such other person, or any person who, with intent to deceive, shall deal in, or offer for sale goods thus marked, is liable to a fine not under one hundred marks and not exceeding three thousand marks or to imprisonment not exceeding a term of three months. The prosecution only takes place on petition. A withdrawal of the petition is admissible.

Any person who incorrectly applies to goods, or their packing or wrappers or to advertisements, price lists, business letters, recommendations, bills or the like, a state coat of arms, or a name

or coat of arms of a locality, of a community or other parochial body, for the purpose of creating an erroneous impression respecting the nature and value of the said goods, or any person who with such intent shall trade in or offer for sale goods thus marked, is liable to a fine of not less than one hundred and fifty marks and not exceeding five thousand marks or to imprisonment for a term not exceeding six months.

#### *Import and Customs House Regulations.*

If German goods, on being imported into or on transit through a foreign country, are bound to contain a notification showing their German origin, or if the same, at the examination at the Customs House, in respect of the notification of the goods, are treated less favorably than the goods of other countries, the Federal Council has the power to apply corresponding regulations to the foreign goods in question, on their import into, or transit through Germany and to order the seizure and confiscation of the goods, if such regulations are not complied with. The seizure will be effected by the Board of Customs, the confiscation will take place by sentence of the administrative authorities. (Art. 459 of the Criminal Procedure.)

#### *Expunction of Trade Marks.*

On the application of the proprietor, the mark will be expunged from the register at any time.

The expunction will take place officially:

1. On the expiration of ten years from the date of the registration or renewal of the mark.

2. If the registration of the mark ought to have been refused.

If the expunction is to take place for other reasons than in accordance with an application made by the proprietor, the Patent Office shall give the latter previous notice of the fact. If he does not oppose within one month from the receipt of the notice, the expunction will take place. If he opposes, the Patent Office will come to a decision on the case. If the expunction is to take place in consequence of the expiration of the term of ten years, such expunction shall not be carried into effect, if the proprietor of the mark shall, within one month from the receipt of the notice of expunction, apply for a renewal of the registration by payment of a fee of ten marks in addition to the renewal fee; the renewal shall then be considered as having taken place on the date of expiration of the former term.

A third person can make application for the expunction of a mark.

1. If the mark has been registered to him for the same goods, or a similar class of goods, on the ground of a prior application,

or in accordance with the Law for the Protection of Trade Marks of the 30th of November, 1874;

2. If the business to which the trade mark belongs, is no longer carried on by the registered proprietor;

3. If there are any circumstances to show that the mark is misleading and involves the risk of deception.

If a trade mark which was excluded from registration under the Law for the Protection of Trade Marks of November 30, 1874, has been acknowledged in the branch to represent goods of a certain business, until the enactment of the present law, and in the event of such mark being registered by another person, the proprietor is entitled, until the 1st of October, 1895, to apply for the expunction of such mark. If the application for expunction is granted, the mark may, before expiration of the term provided for by Article 4, paragraph 2, be entered on the register in favor of the applicant.

The application for expunction must be proved before a court of law, action being taken against the registered proprietor, or if deceased against his heirs.

If the transfer of the mark to another person has taken place before or after the commencement of the action, the judgment given in view of the case, shall have effect against the legal successor and may be executed on the same. The capacity of a legal successor to participate in the suit is determined according to Article 63 to Article 66 and Article 73 of the Civil Law Code.

In the case of paragraph 1 No 2 (of this Article) application for expunction may be filed at the Patent Office in the first place. The Patent Office then gives the person registered as proprietor of the mark notice thereof. If the same does not oppose the application within one month from the date of delivery of the notice, the expunction takes place.

If opposition is raised, the applicant has the option of making good his claim to the expunction before a court of law.

#### *Classification.*

1. Products of agriculture, forestry, gardening and animal breeding, also of fishing and hunting.

2. Remedies and bandage materials for men and animals, drugs, means for the extermination of animals and plants, preservatives, disinfectants.

3. Articles of clothing, with the exception of fur goods (12) and lace (30). (a) Hats and other headgear and adornments; (b) shoes; (c) knitted and woven goods; (d) miscellaneous (garments, linen, corsets, suspenders, neckties and the like).

4. Lighting, heating, cooking and ventilating apparatus and implements.

5. Bristles and goods made of bristles (brushes, brooms, scrub-



bing brushes, paint brushes), also combs, sponges, hair-dressing implements and the like.

6. Chemical products, except those listed under Classes 2, 8, 11, 13, 20, 34, and 36, also raw mineral products, except those named under Class 37.

7. Materials for packing and stuffing, heat-retaining and insulating means, asbestos goods, waste.

8. Manure, natural and artificial.

9. Iron, steel, copper and other metals, also goods made of such metals, except those named in Classes 4, 17, 22, 23, 32, 33, 35. (*a*) Metals, raw or partially worked; (*b*) cutlery (knives, forks, scythes, sickles, strawknives, hatchets, saws, cutting and thrusting weapons), and tools (files, hammers, anvil, vises, planes, augers and the like); (*c*) needles, also for sewing machines, stitching needles, pins, hairpins, fishhooks; (*d*) horseshoes and horseshoe nails; (*e*) castings, enamel and tinware; (*f*) miscellaneous metal goods.

10. Vehicles (wagons of all kinds, including baby carriages and invalid's carriages, also carriage wheels and water craft).

11. Colors, except painters' colors and ink, Class 32.

12. Skins, hides, leather, pelts and furs.

13. Varnish, lacquer, rosin, adhesive materials, wax, polishing substances and the like.

14. Yarn and thread, string, rope of fiber and drawn metal.

15. Spinning materials (wool, cotton, flax, hemp, jute, and the like), and cushion stuffing (horsehair, seaweed, India fiber, bed feathers and the like).

16. Beverages: (*a*) beer; (*b*) wines and spirits; (*c*) mineral waters and carbonic waters, including bath waters, also spring and bath salts.

17. Gold and silver ware, real and imitation jewelry of every kind, plated ware, argentan, "newsilver" ware, Britannia ware, nickel ware and aluminum ware.

18. Gum, india rubber and gutta percha wares, also the raw materials.

19. Hand and traveling appliances (umbrellas, canes, trunks, portmanteaux and the like).

20. Heating and lighting substances, also unguents. (*a*) Coal, peat, firewood, coke, briquettes, coal-kindlers; (*b*) fats and oils, except those intended for food (26 *b*), also unguents; (*c*) candles and night lights, also wicks.

21. Wooden, cork, horn, tortoise, ivory, meerscham, celluloid and similar wares, turners' and carvers' wares.

22. Instruments and apparatus, except musical instruments, Class 25, and timepieces, Class 40. (*a*) Medical and dental apparatus, pharmaceutical, orthopædic, gymnastic bandages, disinfecting apparatus and the like; (*b*) physical and chemical, op-

tical, goedetic, nautical and surveying instruments, balances, controlling apparatus and the like.

23. Machines, machine parts and implements, including household and kitchen utensils.

24. Furniture and upholstery.

25. Musical instruments.

26. Nutritious articles and articles of luxury, except beverages, Class 10, and tobacco, Class 38. (*a*) Meat products, meat extracts, conserves, including fruit juices, jellies and delicatessen; (*b*) eggs, milk, butter, cheese, artificial butter, edible fats and oils; (*c*) colonial products (coffee substitutes, tea, sugar, meal, spices, vinegar and the like); (*d*) cocoa, chocolate, sweetmeats, also bakers' and confectioners' goods, including yeast and baking powder; (*e*) miscellaneous articles of nourishment and luxury, also for animals, and natural and artificial ice.

27. Paper, pasteboard, boards, articles of paper and pasteboard, raw and partly prepared materials for the manufacture of paper (rags, old paper, cellular material, wood pulp and the like).

28. Photographic and lithographic materials, also miscellaneous materials for the various arts and printing.

29. Porcelain, clay and other earthenware, glass and glassware, glazed ware.

30. Lace and tapestry work, also lace and net.

31. Saddlery, harness and purses, leather ware not previously mentioned, also albums and picture frames.

32. Writing, drawing and painting articles, including ink, India ink and painting colors, office appliances, including business books, school appliances, teaching supplies.

33. Firearms and projectiles.

34. Soaps, cleaning and polishing materials, rust preventatives, washing substances, perfumery and toilet accessories.

35. Games and sporting goods.

36. Blasting materials, priming materials, pyrotechnic materials.

37. Stone, natural and artificial, and other building materials (cement, plaster, lime, gravel, asphalt, tar pitch, piping systems and roof papers).

38. Tobacco manufactures (cigars, cigarettes, smoking and chewing tobacco, snuff).

39. Carpets and other floor coverings, table covers, bed covers, curtains, blinds, portieres.

40. Timepieces.

41. Woven goods, including ribbons; (*a*) velvets and plushes; (*b*) linens, half-linens and wash goods; (*c*) miscellaneous woven goods (silks, woolens, cottons, etc.).

42. Miscellaneous wares. Under this head are classed

marks which are intended for a large number of diversified goods (principally export and commission articles).

Class 42 has long been a subject of criticism by those who have had experience of its operation.

Registration in Class 42 will cover goods in any or all of the other classes. Formerly the applicant registered in this class for goods which properly belonged in several of the 41 preceding classes and instead of registering separately in the several classes he registered only in Class 42, and by registering in Class 42 the registrant was able to cover a multitude of goods upon which the mark was not used, the fact is he had no intention of using the mark, thereby excluding from the market others who had used the mark on their goods but failed to register.

The Patent Office now requires the applicant to state the character of business in connection with which he is using the trade mark and keeping strictly within the limits. It requires proof from the applicant that he is, in fact, dealing in the goods which he attempted to cover in his application. This procedure has met the entire approval of the section of appeals of the Office. (Blatt fuer Patent, Muster und Zeichenwesen, 1908, p. 214.)

#### *Law Against Unfair Competition of June 7, 1909.*

Any person who, for the purpose of competition, commits in business, acts contrary to honest usages, may be enjoined from the continuance of said acts and held for damages. (Art. 1.)

Whoever in public announcements or in communications which are intended for a large circle of persons, makes, especially in regard to commercial conditions, in regard to the nature, the origin, the mode of manufacture or the price of merchandise or industrial services, in regard to the manner or source of acquisition of merchandise, in regard to the possession of awards of honor, in regard to the cause or purpose of the sale, or in regard to the amount of stock on hand, false statements of such a nature as to present the appearance of an especially favorable offer can be enjoined to discontinue the false statements. (Art. 3.)

Whoever, with the intention of presenting the appearance of an especially favorable offer, in public announcements or communications which are intended for a large circle of persons makes in regard to commercial conditions, especially in regard to the nature, the origin, the manner of manufacture or the price of merchandise or industrial services, in regard to the manner or source of acquisition of merchandise, in regard to the possession of awards of honor, in regard to the cause or purpose of the sale or in regard to the amount of stock on

hand, statements which he knows to be false and of such a nature as to induce error, shall be punished by imprisonment for a term not exceeding one year and with a fine not exceeding five thousand marks, or by one of these penalties.

If the false statements indicated in the paragraph preceding are made by an employe or an agent of a commercial enterprise, the proprietor or director of the enterprise is liable to punishment, together with the employe or the agent, if he had cognizance of the matter. (Art. 4.)

He is liable to imprisonment not exceeding one year and to a fine not exceeding five thousand marks or to one of these penalties, who, after having announced a liquidation sale of merchandise, places on sale merchandise which has been produced solely for the liquidation sale (known as the *Vorschieben oder Nachschieben von Waren*). (Art. 8.)

A prison sentence not to exceed one year and a fine not to exceed five thousand marks shall, provided a more severe punishment is not prescribed by other provisions, be imposed on him who, in the course of business and for the purposes of competition, offers, promises or awards presents or other inducements to an employe or agent of an industrial enterprise in order to obtain for himself or for a third party by means of unfair acts on the part of the employe or agent an advantage in the acquisition of merchandise or industrial service.

The same penalty is imposed upon the employe or agent of an industrial establishment, who, in the course of business, solicits, allows to be promised to him or accepts presents or other inducements for which he is to procure for another by means of unfair acts a competitive advantage in the acquisition of merchandise or industrial service. (Art. 12.)

Whoever for the purpose of competition alleges or circulates, relative to the business of another party, relative to the proprietor or manager of the business, relative to the goods or industrial service of another, facts of such a nature as to prejudice the conduct of the business or the credit of the proprietor, is, provided the truth of the facts cannot be proved, liable to the injured party for damages. The injured party can also claim an injunction against the repetition of the assertion or circulation of such facts.

If it is a question of confidential communications and if the party making the communication or the recipient thereof has a justifiable interest in same, the action for discontinuance is only admissible if the facts alleged or circulated are contrary to the truth. An action for damages can only be brought if the party making the communication knew or should have known the falsity of the facts alleged. (Art. 14.)

Whoever, against his better knowledge, alleges or circulates facts relative to the business of another, relative to the person

of the proprietor or the manager of the business, to the goods or industrial service of another, facts, contrary to the truth, and of such a nature as to prejudice the conduct of the business, shall be punished by imprisonment not exceeding one year and by a fine not exceeding five thousand marks or by one of these penalties.

If the facts mentioned in paragraph 1 are alleged or circulated by an employe or agent of an industrial establishment, the proprietor of the establishment is liable together with the employe or agent, if the act was committed with his knowledge. (Art. 15. )

A prison sentence not to exceed one year, and a fine not to exceed five thousand marks, or one of these penalties shall be inflicted on any employe, workman, or apprentice of an establishment, who, unauthorized, for the purpose of competition, or with the intention of injuring the proprietor of the establishment, communicates to a third party, during the term of his engagement, industrial or commercial secrets which have been entrusted to him on account of his engagement, or which are otherwise accessible to him.

The same penalty shall be imposed upon him who profits by or communicates to third parties, for the purposes of competition, industrial or commercial secrets, knowledge of which he has gained through the communications named in paragraph 1, or through his own act violating the law and good morals. (Art. 17.)

*Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

Section 14 of the Trade Mark Law of 1894 prohibits the wrongful application to goods of the trade name of another party or of a registered trade mark, as well as the placing on the market or offering for sale of goods thus marked. Trade names of persons residing in foreign countries enjoy this protection without necessity of registration. Section 15 of the law affords protection against false trade descriptions and Section 16 prohibits the wrongful application to goods of the name of a place or district as well as the offering for sale of goods so marked. Under the provisions of the Law against Unfair Competition, 1909, "Any person taking immoral action in commercial transactions for the purpose of competition can be made to discontinue such action and to pay compensation." This clause covers cases of false indications of origin. Proceedings may be taken against persons in respect of false indications of origin either by means of a civil action before the ordinary courts or by means of criminal proceedings. Criminal proceedings, except under Section 16 of the Trade Marks Law, can only be in-

stituted on the demand of injured parties. No special regulations are in force for the prevention of importation of goods bearing a false indication of origin, but goods bearing falsified German trade marks may be seized on importation. No provisions have so far been laid down requiring that imported foreign goods must bear an indication of the place of origin except in the case of sparkling wines and brandy; but a section of the Trade Marks Law, 1894, authorizes the Federal Council to retaliate, should any other country impose any conditions as to the marking on goods of German origin. Marking Goods: "Schutzmarke" or "Eingetragene Schutzmarke."

#### DECISIONS.

##### *False Marks of Origin.*

A decision of the German Patent Office, passing upon an application for the registration of a trade mark for "Egyptian Cigarettes" of German manufacture gives a view of the position taken by the Office in such cases, and of the manner in which it proceeds. The designation of the German manufactured goods as "Egyptian Cigarettes," led the Patent Office to inquire into the question whether these words were understood in the market as a designation of the place of manufacture, or whether, as was contended by the applicant, they simply indicated certain peculiarities of form, flavor and aroma. To this end, the trade mark section of the Patent Office, on its own initiative, sent out an inquiry to various chambers of commerce, firms and corporations, inquiring from them whether the words "Egyptian Cigarettes" as a designation, had lost their meaning as an indication of the geographical origin of the goods and had become a mere indication of quality. Although a large number of the parties interrogated took the latter view of the meaning of the term, the majority replied that the term indicated to the purchasing public goods of Egyptian manufacture. Acting upon this view, the Patent Office rejected the application upon the ground that the term as applied to cigarettes manufactured in Germany, was one calculated to deceive the public with respect to the origin of the goods. This decision was afterwards affirmed upon appeal by the section of appeals, upon the same ground. (Blatt fuer Patent, Muster und Zeichenwesen, 1908, p. 297.)

##### *Commercial Names.*

An American firm, the American Optical Company, manufactured eyeglasses and other optical goods for sale in Germany. In 1908, a German corporation was organized under the name,

"American Optical Co.—Thompson & Schilling." Thereafter, the German corporation inserted advertisements in newspapers under the name, "American Optical Co.," without the addition to the words "Thompson & Schilling." Their envelopes were printed in the same way, and their letterheads contained the name, "American Optical Co.," in large letters with the addition "Thompson & Schilling" in small type.

The American corporation brought an action to enjoin these acts of unfair competition, and to prevent the further use of the name, "American Optical Co.," either with or without the addition of the words "Thompson & Schilling," unless printed so as to be clearly distinguishable from its corporate name.

The Supreme Court overruling the courts of first and second instance, holds that the plaintiff should have the relief sought. It finds that the plaintiff is legally entitled in the United States to the use of the firm name American Optical Company. That under the provisions of the International Convention of 1883 and of the additional acts of December 14, 1900, the citizens of any country, a party to the convention, are entitled to enjoy in all the other states of the union the protection accorded against unfair competition to citizens of that country. The American corporation can accordingly claim full protection against unfair competition in the enjoyment of its trade throughout Germany, although it has not its main establishment there. Inasmuch as the acts of the defendant are such as are punishable under the German law against unfair competition, it does not matter whether the plaintiff's firm name is unique, or arbitrary, or descriptive of the business, or whether it is well enough known to the German public to be recognized as the designation of the plaintiff. As to that the court said, it is enough if the use by the defendant would deceive a small part of the public. The only question is one of priority of use. The plaintiff, by prior appropriation, acquired the right to protection against the unlawful use thereof by another, whether the public had common knowledge of the existence of that company or not. Moreover, the intent of the defendant to deceive was fully evidenced by the omission of the words "Thompson & Schilling" in the use of its name, and in the application thereof to the letterheads in a type much smaller than the first part of the name. The decision of the lower courts was held to be erroneous, and was reversed, and relief granted to plaintiff as claimed. (*Gewerblicher Rechtsschutz und Urheberrecht*, 1911, p. 148.)

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A proper name is registrable as a trade mark in Germany if it be the name of the applicant or of some predecessor in business, or have likewise some bona fide relation to the goods to which

it is applied. But a name, not that of the applicant, is not registrable as a trade mark, merely upon the consent of its owner, unless such a connection be shown between the name and the goods.

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Section 13 of the German trade mark law provides that the registration of a trade mark shall not prevent anyone from using his name, firm name, address or similar descriptive matter upon goods of his manufacture or upon the package or wrapper thereof, or from making use of such matter in his trade. The Reichsgericht has held that this section, however, has no reference to the question of the resemblance of one trade mark to another. It protects only the marking of goods in the manner designated, and merely secures to every man the right to the use of his name, or firm name in spite of the registration of a trade mark by another. It does not give any absolute right to use either his own name or the name of his firm, alone or in connection with other words, in the manner or form of a trade mark and will not enable him to register his own name, or his firm name, as a trade mark, alone, or in connection with other features, after the registration by another of a trade mark that already includes such name or names. The existence of two similar trade marks upon the register for the same or for similar goods is contrary to the provisions of the trade mark law. (*Zeitschrift fuer Industrierecht*, 1907, p. 273.)

#### *Descriptive Terms.*

The registrability of a trade mark derived from a foreign language, in Germany, is dependent upon the question of how the term would be understood commonly in German trade circles.

The word "Sorpresa," the Spanish equivalent of the word "surprise," is not registrable as a trade mark, for the reason that it is descriptive, conveying the idea of the surprising superiority of the goods to which it was applied. The section of appeals of the Patent Office had previously, in many cases, rejected the English equivalent of the word "Surprise" upon the same ground. (*Blatt fuer Patent, Muster, und Zeichenwesen*, 1909, p. 33.)

The word "Teutsch" is not registrable as a trade mark, because it so closely resembles the word "Deutsch" (German) as to be likely to be confused with it and is therefore, to be regarded as its equivalent so far as the question of registrability is concerned, and becomes, therefore, a mere mark of geographi-



cal origin. (Blatt fuer Patent, Muster, und Zeichenwesen, 1909, p. 34.)

The section of appeals of the German Patent Office holds that the word trade mark, "Bergsteiger," "Mountain Climber," is a descriptive term, when applied to tires. The applicant for registration contended that, inasmuch as wheeled vehicles could not possibly be used for mountain climbing, there was no descriptive force in the term as applied to tires; but the Patent Office points out, that there is no scarcity of mountain roads accessible to wheeled vehicles and the natural presumption of the purchaser would be, that the name was meant to indicate a tire especially adapted for such rough and difficult travel as might be encountered in a mountainous country, that is, a tire of special durability, or one less likely to slip, or to be punctured. (Mitteilungen vom Verband deutscher Patentanwälte, 1910, p. 132.)

The Patent Office refused registration to the word "Boudoir" for smoking tobacco and cigarette paper, as descriptive. On the other hand, the words "Excelsior Fix" for pneumatic tubes and tires were allowed registration, notwithstanding the fact that the word "Excelsior" alone is held to be not registrable. The word "Autumn" for soap, washing and cleaning preparations was rejected because, the Office said, it indicated the season in which the goods were produced. Upon proof, however, that no soap factory was exclusively run in the fall, the mark was registered. The word "Una" was rejected for talking machines, because, in Italian, the word means "for one voice." The word "Montero" was refused registration for cigarettes because it is the Spanish equivalent of the word "hunter" and therefore a descriptive term. The word "Turm" (German "tower") was refused registration for lamps and illuminating appliances because towers, from time immemorial, had been used as beacons. The words "Queen Quality" were rejected because of a similarity in meaning to the word "Regina." (Mitteilungen vom Verband deutscher Patentanwälte, 1911, p. 95.)

#### *Trade Marks "Record" and "Record-Breaker."*

The owner of the former mark, the registrant thereof, contended that the words were alike in significance, in sound, and in the impression which they made upon the hearer, and that for that reason there was such liability to confusion as constituted infringement. The court, however, held that there was no such similarity, saying that in the compound word "Record-Breaker," the word "Record" was not the prominent feature, the latter portion of the word receiving the emphasis, not only in pronunciation but in thought, the word not indicating a higher degree of that quality indicated by the word "Record," but an entirely independent standard of excellence. These considerations, added to the dissimilarity of the words in appearance and

in sound, it was held, removed any possibility of confusion between them. (*Zeitschrift fuer Industrierecht*, 1906, p. 191.)

#### *Cancellation of a Mark.*

A German manufacturer of liquors had several years ago made application for the registration of a mark consisting essentially of the word "Muskowiter." Registration was refused upon the ground that the word was, in a sense, a geographical term, being the ordinary designation for the inhabitants of Moscow and for the Russian people generally. Notwithstanding this refusal, the manufacturer continued in the use of his mark upon his goods. Thereafter, a competing house in south Germany made application for the registration of the same word as a trade mark, and this time it was admitted to registration without protest. The former manufacturer then immediately applied to have this mark cancelled, but his application was refused by the court of first instance. An appeal having been taken, the appellate court sustained the appeal, and ordered the cancellation of the mark, holding that it was contrary to the interests of the public that a mark once rejected as unregistrable, should be thereafter registered in favor of a third party; since it often happened, in fact, that the first applicant did not cease to use the mark on account of the refusal of the government to protect it by registration. Accordingly, a change in the views of the Patent Office as to the registrability of a mark, upon an application by a second party, might cause great injury to the applicant who had been formerly refused. Where, therefore, as in this case, registration had been granted under such circumstances, it was held that the interests of the public demanded an immediate cancellation of the mark. (*Blatt für Patent, Muster und Zeichenwesen*, 1905, p. 105.)

#### *Lawful Use of Another's Trade Mark.*

A German manufacturer sold a certain pharmaceutical product under the trade mark "Aspirin." The same product was made by a competitor who sold it in tubes, labeled conspicuously, as the name of the product, "Acid acetylo-salicylic," and underneath, in small type, and separated by two lines from the above designation, the words in their German form, "equivalent to Aspirin." The owner of this trade mark brought suit, but judgment for the defendant has been affirmed by the Supreme Court of the Empire.

The German courts hold that the plaintiff's rights in the trade mark did not involve the right to exclude a third party from all use thereof on pharmaceutical products, but only to prevent the use of the mark as the designation of the article in connection with which it is used. As employed in this instance, the word did not appear as the designation of the goods, which were

plainly denominated otherwise. The only question to be decided by the court was, in its view, whether the use made by the defendant of the mark was one calculated to mislead the public and to cause the defendant's product to be confused with the plaintiff's. The court said that the words "equivalent to" were an unequivocal statement that the goods were something other than "Aspirin" and that these words were so conspicuously placed in connection with the name that they would never escape anyone who saw the name itself. (*Bayer & Co. vs. Asche & Co., Gewerblicher Rechtsschutz und Urheberrecht, 1906, p. 263.*)

### *The Rights of Foreigners under the German Law.*

The Supreme Court under date of May 8, 1907, has held that a stranger invoking for his goods the protection of the German law must show that his merchandise is equally protected in his own country, that is, that the remedy which he seeks under the German law is one that is secured to him by the law of his own country. (*Zeitschrift für Industrierecht, 1906, p. 261.*)

### *Infringement.*

Infringement is committed when a competitor intentionally makes such use of his own name on labels or advertisements, that the only portion of same which is noticeable is the same as, or similar to a registered trade mark. This principle was laid down in a decision of the Supreme Court, II Civil Department, December 11, 1908.

The case before the court was that of *Lindt & Sprüngli vs. A. & W. Lindt*. Lindt & Sprüngli are the owners of the registered trade mark "Lindt," for chocolate, and the firm A. & W. Lindt were accused of infringement on the ground that they labeled or advertised chocolates for sale with the inscription, "Genuine A. & W. Lindt Chocolate," printing the words "Lindt Chocolate" in large block letters, and the word "genuine" and the initials "A. & W." in letters so small as not to be noticeable without careful scrutiny. (*Zeitschrift für Industrierecht, February 15, 1909.*)

### *Similarity of Goods.*

It has been held by a court that an assignment of the right to use a certain trade mark upon watches and parts, does not sustain a claim of the right to use the mark also upon watch chains, inasmuch as the chains are not part of the watch or necessary to its completion, but are to be considered as entirely separate and unrelated goods. (*Zeitschrift für Industrierecht, 1908, p. 83.*)

The English words "Rival" and "Climax" have both been adjudged good trade marks in recent suits for cancellation

brought before the German Patent Office. The appellant in the first suit alleged that the word "Rival," meaning as it did a "competitor," lacked the arbitrary and fanciful quality required in a technical trade mark. The examiner of claims, concurred in this opinion and recommended the cancellation of the mark. His decision, however, was overruled by the registrar, who held that the mark was sufficiently distinctive to merit registration. The fact that the French words "Sans Rival" (without a rival) had been refused registration in Germany, did not affect the present case in which the word "Rival" alone was in question. The cancellation was therefore refused.

The Patent Office has recently decided that names of the days of the week are not registrable as trade marks. This decision was based upon the well known fact that it is a custom among trades people to hold special sales of their goods on a particular day. Confusion might thus be caused if a day was appropriated by any one trader, and much harm would be done both to the trading and to the purchasing public. (*Zeitschrift für Industrierecht*, 1911, p. 143.)

A very large number of applications for trade marks consisting of words are filed, which, although they do not at first sight reveal the fact that they are not registrable in the sense of the law, and appear rather to be fancy or invented words, are in reality not suitable for registration. For example, the following words refer to the quality of the goods, and cannot therefore be registered, viz: Brilliant, Chic, Gloriosa, Graciosa, Preciosa, Reform, Universal, etc.

The reasons for refusing registration to the mark "Non plus ultra" were not held to be conclusive in the present case. The common use of the word, in the sense of the turning point or crisis of a narrative or of a series of events, was further held as giving it enough of fanciful quality to merit registration. This view was further sanctioned by the fact that the British Patent Office, which could better judge as to its meaning and use as an English term, had never objected to the word as descriptive. (*Markenschutz und Wettbewerb*, Nov. 1, 1911, pp. 57-58.)

A decision was rendered by the German Patent Office involving the well known mark of the Victor Talking Machine Company, showing the representation of a dog, sitting in a listening attitude before a gramophone horn, with the words "His Master's Voice" underneath. The mark was protected in Germany by two different registrations. An application was later made to register a mark for talking machines, consisting of a phonograph before the horn of which a dove is seen with outstretched wings. A forest is shown in the background and the word "Phoenix" completes the mark. On close comparison, the two marks exhibit considerable differences, so that, when seen together, it would appear to be improbable that any confusion

could arise in their use. The Patent Office, however, decided that the similarity of the marks must be determined by a comparison of the impressions left upon purchasers, after seeing the two marks at different times. The fact that in each mark the characteristic feature is a phonograph and the picture of a listening animal is sufficient to make the after impression of each so similar to that of the other as to cause confusion. It made no difference that a dog is shown in one mark and a dove in the other. (*Mitteilungen vom Verband deutscher Patentanwälte*, 1912, p. 24.)

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## GIBRALTAR

This important British fortress, Crown colony and seaport, near the southern extremity of Spain, may be described as a bold headland jutting into the sea, running nearly due north and south, at the entrance of the Mediterranean, 60 miles S. E. of Cadiz. This rock forms a promontory connected with the continent by an isthmus of sand 1,500 yards long and from 950 to 1,800 yards broad. It is three miles in length from north to south by a half to three-quarters of a mile in breadth, and seven miles in circumference. Its area is about 1,266 acres. The rock rises abruptly above the sea to about 1,400 feet; on the western side the two towns are built, the northern is Gibraltar proper and the southern (the south) is known in Spanish as Europa. Gibraltar is a free port and the entrepot for the distribution of the manufactures of the United Kingdom and of other countries to the Morocco, Algerian and Spanish ports; it is also one of the chief coaling stations of the Mediterranean, but trade, excepting in coals, timber, flour and East Indian wheat, has diminished considerably of late years, especially since the development of direct steam communication by Great Britain and other countries with the ports in the vicinity. The building of dry docks and a commercial port is in progress, and, doubtless, when these important works are carried out, great impetus will be given to trade. There is a railway line from the neighboring Spanish port of Algeciras (which is five miles distant by sea and 12 by land from Gibraltar) to Bobadilla, on the Malaga-Cordoba-Madrid line, of 177 kilometres in length. The total population in 1911 was estimated at 30,000.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

### *Laws.*

Ordinance to prevent the imposition of the fraudulent marks on merchandise, 1888, No. 4, substantially like the British.

*Documents Required.*

Power of Attorney; three facsimiles of the mark; statement of the goods for which same is to be used, as well as applicant's address, and one electrotype.

*Assignment.*

A trade mark is assignable with the good will of the business.

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## GOLD COAST COLONY

The Gold Coast is the name generally given to a portion of Upper Guinea. The length of coast-line is about 350 miles. The area of the colony is 24,200 square miles; of Ashanti 20,000 square miles, and of the Northern Territories 35,800 square miles.

The British Gold Coast extends from the Volta River to the French settlement of Assinie on the west. The colony includes the best landing places and the richest gold districts in Guinea. The population may be roughly estimated at 1,700,000, of whom not more than 550 are Europeans.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Laws.*

Ordinance No. 2 of 1900. Amendment No. 7 of 1902. Trade Mark Rules of June 10, 1902.

*Duration.*

Fourteen years; renewable.

*What May be Registered.*

(a) A name of an individual or firm printed, impressed, or woven in some particular or distinctive manner; or

(b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(c) A distinctive device, mark, brand, heading, label, or ticket.

(d) An invented word or invented words, or

(e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

There may be added to any one or more of the essential particulars mentioned in this section any letter, words, or figures, or combination of letters, words, or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive

use of added matter, and a copy of the statement and disclaimer shall be entered on the register.

A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

Any special and distinctive word or words, letter, figure, or combination of letters or figures or of letters and figures used as a trade mark before August 13, 1875, may be registered as a trade mark under this Act.

#### *Requirements.*

Power of attorney; three facsimiles of the mark; statement of the goods for which same is to be used, as well as applicant's address, and one electrotype.

#### *Classification.*

Same as Great Britain.

#### *Government Fees.*

On application, 10s; on completion, £2; renewal fee, £1.

#### *Assignment.*

A trade mark is assignable with the good will of the business. Registering a subsequent proprietor, £1.

## GREAT BRITAIN

AREA AND POPULATION—The total area of England, Scotland, Ireland, Wales, the Isle of Man and the Channel Islands is 121,391 square miles; the total for the British Empire is 11,454,862 square miles. The total population of the empire in 1910 was 397,261,509. The population of the United Kingdom April 1, 1911, when the last census was taken, was: England and Wales, 36,075,260; Scotland 4,759,521; Ireland, 4,381,951. Total, 45,216,741.

MONEY—Pound (£)=\$1.8665 United States; shilling (s.)=24.3325 cents United States; pence (d.)=2 cents United States.

WEIGHTS AND MEASURES—Weights and measures differing from those used in the United States are as follows: Imperial gallon=1.2003 United States gallons; imperial bushel=1.031515 United States bushels; hundredweight=112 pounds; ton=2,240 pounds; imperial quarter (grain)=480 pounds.

#### *Laws.*

The first British Statute on the subject of Trade Marks was enacted in 1862. The first provisions for the registration of trade marks was a Statute of 1875.

Laws of August 25, 1883, August 23, 1887, December 24, 1888, May 11, 1891. Rules of December 31, 1889. Trade Mark Rules of 1890, 1897 and 1898. Trade Mark Act of 1905. Trade Mark Rules of March 24, 1906.

*Duration.*

The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time. (Sec. 28.)

*Renewal.*

At any time not less than two months and not more than three months before the expiration of the last registration of a trade mark any person may leave at the office a fee for the renewal of the registration of the mark upon form TM No. 12. Such person shall indorse upon such form his name and address, and before taking any further step the registrar may require such person to furnish within five days an authority to pay such fee signed by the registered proprietor, and if such person does not furnish such authority, may return such fee and treat it as not received.

When he does not require such authority, the Registrar shall upon receipt of such fee communicate with the registered proprietor at his registered address, stating that the fee has been received and that the registration will in due course be renewed.

At a date not less than one month and not more than two months before the expiration of the last registration of a mark, if no fee upon the Form TM No. 12 has been received, the Registrar shall send to the registered proprietor at his registered address a notice in the Form O No. 3.

At a time not less than 14 days and not more than 28 days before the expiration of the last registration of a mark, the Registrar shall, if no renewal fee has been received, send a notice to the registered proprietor at his registered address in the Form O No. 4.

If at the date of the expiration of the last registration of a mark the renewal fee has not been paid, the Registrar shall advertise the fact forthwith in the Journal, and if within one month of such advertisement the renewal fee upon Form TM No. 13, together with an additional fee upon Form TM No. 14, is received, he may renew the registration without removing the mark from the register.

Where after one month from such advertisement such fees have not been paid, the Registrar may remove the mark from the register as of the date of the expiration of the last registration, but may upon payment of the renewal fee upon Form TM No. 13, together with the additional fee upon the Form TM No. 14, restore the mark to the register if satisfied that it is just so to do, and upon such conditions as he may think fit to impose.



Where a trade mark has been removed from the register the Registrar shall cause to be entered in the register a record of such removal and of the cause thereof.

Upon the renewal of a registration a notice to that effect shall be sent to the registered proprietor at his registered address and the renewal shall be advertised in the Journal.

*What May Be Registered.*

A registrable trade mark must consist of or contain at least one of the following essential particulars:

1. The signature (or, in the case of an incorporated company, the name written in some particular and distinctive manner) of the firm applying for the registration, or of a predecessor in the business; or

2. An invented word or invented words; or

3. A word or words having no reference to the character or quality of the goods, and not being a geographical name; or

4. A mark which is otherwise of a distinctive character so as to be adapted to distinguish practically the goods of the proprietor of the trade mark from those of other firms.

In determining whether a mark is distinctive for the purposes of this section, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered, but subject hereto a pictorial representation of such goods, or words having reference to the character or quality of such goods, shall not of themselves be deemed distinctive under the provisions of this section. (Sec. 9.)

For the purpose of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

Words having indirect reference to the character or quality of the goods are registrable; they may be geographical or even surnames within limitations.

An applicant is not limited to his own signature as a trade mark. He may register the signature of his predecessor in business or even the signature of some other person, under special circumstances. The name of a company may also be registered.

Any other distinctive mark can be registered. Under Section 3 a Mark includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof.

The Registrar may refuse to accept any application upon which the following appear:

(a) The words "Patent," "Patented," or "By Royal Letters Patent," "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is forgery," or words to like effect.

(b) Representations of their Majesties or of any member of the Royal Family.

Representations of the Royal Arms or Royal Crests, or arms or crests so nearly resembling them as to lead to mistake, or of British Royal crowns, or of the British national flags, or the word Royal or any other words, letters or devices calculated to lead persons to think that the applicant has Royal patronage or authorization, may not appear on trade marks, the registration of which is applied for. Provided always that nothing contained in this rule shall preclude the Registrar from allowing the registration as an "old mark," that is as a mark which was used by the applicant or his predecessors in business before the 13th of August, 1875, of any mark which was capable of being so registered before the Trade Marks Act, 1905, came into operation. (Art. 12.)

Where representations of the arms of a foreign State or place appear on a mark the Registrar may call for such justification as he may deem necessary for their use.

Where a representation of the arms or emblems of any city, borough, town, place, society, body corporate, or institution appears on a mark, the applicant shall, if so required, furnish the Registrar with a consent from such official as the Registrar may consider entitled to give consent to the use of such arms or emblems.

Where the names or representations of living persons appear on a trade mark, the Registrar shall, if he so require, be furnished with consents from such persons before proceeding to register the mark. In the case of persons recently dead the Registrar may call for consents from their legal representatives before proceeding with registration of a trade mark on which their names or representations appear. (Art. 15.)

Where the name of a description of any goods appears on a trade mark the Registrar may refuse to register such mark in respect of any goods other than the goods so named or described.

Where the name or description of any goods appears on a trade mark which name or description in use varies, the Registrar may permit the registration of the mark with the name or description upon it for goods other than those named or described, the applicant stating in his application that the name or description varies.

#### *Mode of Application.*

If application for registration of a trade mark be made by a firm or partnership it may be signed in the name or for and on behalf of the firm or partnership by any one or more members thereof.

If the application be made by a body corporate it may be signed by a Director or by the Secretary or other principal officer of such body corporate.

Any application may be signed by an agent.

Every application for registration of a trade mark shall contain a representation of the mark affixed to it in the square which the Form TM No. 2 contains for that purpose.

Where the representation exceeds such square in size the representation shall be mounted upon linen, tracing cloth or other material that the Registrar may consider suitable. Part of the mounting shall be affixed in the space aforesaid and the rest may be folded over.

There shall be sent with every application for registration of a trade mark four additional representations of such mark on the Form TM No. 3, exactly corresponding to that affixed to the application Form TM No. 2, and noted with all such particulars as may from time to time be required by the Registrar. Such particulars shall, if required, be signed by the applicant or his agent.

All representations of marks must be of a durable nature, but the applicant may in case of need supply in place of representations on the Form TM No. 3, half sheets of strong foolscap of the size aforesaid with the representations affixed thereon and noted as aforesaid.

Applications for the registration of the same mark in different classes shall be treated as separate and distinct applications, and in all cases where a trade mark is registered under the same official number for goods in more than one class, the registration shall henceforth for the purpose of fees and otherwise be deemed to have been made on separate and distinct applications in respect of the goods included in each class. (Art. 24.)

The Registrar, if dissatisfied with any representations of a mark may at any time require another representation satisfactory to him to be substituted before proceeding with the application.

Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the Registrar may think most convenient.

The Registrar may also, in exceptional cases, deposit in the Office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

When a trade mark contains a word or words in other than Roman characters, there shall be indorsed on the application in Form TM No. 2 and on each of the accompanying representations in Form TM No. 3, a sufficient transliteration and translation to the satisfaction of the Registrar of each of such words, and every such indorsement shall be signed by the applicant or his agent.

Where a trade mark contains a word or words in a language other than English, the Registrar may ask for an exact trans-

lation thereof, and if he so requires such translation shall be indorsed and signed as aforesaid.

Upon receipt of an application for registration, the Registrar shall cause a search to be made amongst the registered Marks and pending applications for the purpose of ascertaining whether there are on record any Marks for the same goods or description of goods identical with the Mark applied for or so nearly resembling it as to be calculated to deceive.

If after such a search and a consideration of the application the Registrar thinks there is no objection to the Mark being registered, he may accept it absolutely or subject to conditions, amendments and modifications which he shall communicate to the applicant in writing.

If after such search and consideration of the application any objections appear, a statement of those objections shall be sent to the applicant in writing, and unless within one month the applicant applies for a hearing, he shall be deemed to have withdrawn his application.

If the Registrar accepts an application subject to any conditions, amendments, or modifications, and the applicant objects to such conditions, amendments, or modifications, he shall within one month from the date of the communication notifying such acceptance apply for a hearing, and if he does not do so he shall be deemed to have withdrawn his application. If the applicant does not object to such conditions, amendments or modifications, he shall forthwith notify the Registrar in writing.

The decision of the Registrar at such hearing as aforesaid shall be communicated to the applicant in writing, and if he objects to such decision, he may within one month apply upon Form TM No. 4 requiring the Registrar to state in writing the grounds of his decision and the materials used by him in arriving at the same.

Upon receipt of such form the Registrar shall send to the applicant such statement as aforesaid in writing, and the date when such statement is sent shall be deemed to be the date of the Registrar's decision for the purpose of appeal.

The Registrar may call on an applicant to insert in his application such disclaimer as the Registrar may think fit in order that the public generally may understand what the applicant's rights, if his mark is registered, will be.

If the Hearing before the Registrar is successful the Mark is duly advertised in the Trade Marks Journal upon the necessary formalities having been attended to, and one month thereafter is allowed for opposition, after which, if no opposition is entered, the Mark is registered on payment of the registration fee and the certificate is issued.

*Appeal from Registrar.*

There shall be no appeal from a decision of the Registrar otherwise than to the Board of Trade, but the court in dealing with any question of the rectification of the register shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

*Opposition to Registration.*

Any person may within one month from the date of any advertisement in the Journal of an application for registration of a trade mark give notice in writing at the Office of opposition to the registration.

Such notice shall be in Form TM No. 7 and shall contain a statement of the grounds upon which the opponent objects to the registration. If the registration is opposed on the ground that the mark resembles marks already on the register, the numbers of such marks and the numbers of the Journals in which they have been advertised shall be set out. Such notice shall be accompanied by a duplicate which the Registrar will forthwith send to the applicant.

Within one month from the receipt of such duplicate the applicant shall send to the Registrar a counterstatement in writing setting out the grounds on which he relies as supporting his application. The applicant shall also set out what facts, if any, alleged in the Notice of Opposition he admits. Such counterstatement shall be accompanied by a duplicate in writing.

Upon receipt of such counterstatement and duplicate the Registrar will forthwith send the duplicate to the opponent and within one month from the receipt of the duplicate the opponent shall leave at the Office such evidence by way of statutory declaration as he may desire to adduce in support of his opposition and shall deliver to the applicant copies thereof.

If an opponent leaves no evidence, he shall be deemed to have abandoned his opposition, but if he does then within one month from the receipt of the copies of declaration, the applicant shall leave at the Office such evidence by way of statutory declaration as he desires to adduce in support of his application and shall deliver to the opponent copies thereof.

Within fourteen days from the receipt by the opponent of the copies of the applicant's declarations the opponent may leave at the Office evidence by statutory declaration in reply, and shall deliver to the applicant copies thereof. Such evidence shall be confined to matters strictly in reply.

In any proceedings before the Registrar, he may at any time, if he thinks fit, give leave to either the applicant or the opponent to file any evidence upon such terms as to costs or otherwise as the Registrar may think fit.

Where there are exhibits to declarations filed in an opposition,

copies or impressions of such exhibits shall be sent to the other party on his request, or, if such copies or impressions cannot conveniently be furnished, the originals shall be sent to the Office, so that they may be open to inspection. The original exhibits shall be produced at the hearing unless the Registrar otherwise directs.

Upon completion of the evidence the Registrar shall give notice to the parties of a date when he will hear the arguments in the case. Such appointment shall be for a date at least fourteen days after the date of the notice, unless the parties consent to a shorter notice. Within seven days from the receipt of such notice both parties shall file Form TM No. 9. A party who receives such notice and who does not, within seven days from the receipt thereof, give notice on Form TM No. 9 that he intends to appear, may be treated as not desiring to be heard and the Registrar may act accordingly.

Where in opposition proceedings any extension of time is granted to any party, the Registrar may thereafter, if he thinks fit, without giving the said party a hearing, grant any reasonable extension of time to the other party in which to take any subsequent step.

The decision of the Registrar shall be subject to appeal to the court at the instance of any of the parties upon notice of appeal being given in the prescribed manner, and except and so far as the court may otherwise direct, such appeal shall be heard on the same materials as were before the Registrar.

On such appeal the court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

In any proceeding under this section, the tribunal hearing the parties may permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such the trade mark so modified shall be advertised in the prescribed manner upon its being registered.

If a party giving notice of opposition neither resides nor carries on business in the United Kingdom, the tribunal may require such party to give security for costs of proceedings before it relative to such opposition, and in default of such security being duly given may treat the opposition as abandoned. (Sec. 14.)

#### *Disclaimers.*

If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Board of Trade or the court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register,

that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration. Provided, always, that no such disclaimer shall affect any rights of the proprietor of the said trade mark except such as depend upon the said registration. (Sec. 15.)

#### *Associated Trade Marks.*

If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provision of this Act user of a registered trade mark is required to be proved for any purpose, the tribunal may if and so far as it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity as an equivalent for such user.

#### *Non-Completion of Registration.*

Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice. (Art. 18.)

#### *Registration to Be Conclusive After Seven Years.*

In all legal proceedings relating to a registered trade mark, the original registration of such trade mark shall, after the expiration of seven years from the date of such original registration (or seven years from the passing of this act, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section 11 of this Act. (It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a

court of justice, or would be contrary to law or morality, or any scandalous design.) (Sec. 11.)

Provided that nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the use of the first mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of Section 21 of this Act. In case of honest concurrent user or of other special circumstances which, in the opinion of the court, make it proper so to do, the court may permit the registration of the same trade mark, or of nearly identical trade marks for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose. (Sec. 21.)

#### *Non-User of Trade Mark.*

A registered trade mark may, on the application to the court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title, without any bona fide intention to use the same in connection with such goods, and there has in fact been no bona fide user of the same in connection therewith, or on the ground that there has been no bona fide user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

#### *Assignment.*

A trade mark when registered shall be assigned and transmitted only in connection with the good will of the business concerned in the particular goods or description of goods for which it has been registered and shall be determinable with that good will.

#### *Documents Required.*

Authorization to agent signed by applicant or applicants; full name, address and occupation of applicant; full description of goods to be covered; wood block or electrotype of the mark, preferably not more than two inches in breadth and width, otherwise additional space is required for advertising, which must be



paid for; six copies of the mark. (Form for application may be obtained from B. Singer's Offices.)

*Fees.*

1. On application not otherwise charged to register a trade mark for one or more articles included in one class, £0.10.0.

2. For registration of a trade mark for one or more articles included in one class, £1.0.0.

*Classification of Goods.*

CLASS 1. Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.

CLASS 2. Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.

CLASS 3. Chemical substances prepared for use in medicine and pharmacy.

CLASS 4. Raw or partly prepared vegetable, animal, and mineral substances used in manufactures, not included in other classes.

CLASS 5. Unwrought and partly wrought metals used in manufacture.

CLASS 6. Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines included in Class 7.

CLASS 7. Agricultural and horticultural machinery, and parts of such machinery.

CLASS 8. Philosophical instruments, scientific instruments, and apparatus for useful purposes. Instruments and apparatus for teaching.

CLASS 9. Musical instruments.

CLASS 10. Horological instruments.

CLASS 11. Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals.

CLASS 12. Cutlery and edge tools.

CLASS 13. Metal goods not included in other classes.

CLASS 14. Goods of precious metals (including aluminum, nickel, Britannia metal, etc.), and jewelry, and imitations of such goods and jewelry.

CLASS 15. Glass.

CLASS 16. Porcelain and earthenware.

CLASS 17. Manufactures from mineral and other substances for building or decoration.

CLASS 18. Engineering, architectural, and building contrivances.

CLASS 19. Arms, ammunition, and stores not included in Class 20.

- CLASS 20. Explosive substances.
- CLASS 21. Naval architectural contrivances and naval equipments not included in Classes 19 and 20.
- CLASS 22. Carriages.
- CLASS 23. (a) Cotton yarn; (b) sewing cotton,
- CLASS 24. Cotton piece goods of all kinds.
- CLASS 25. Cotton goods not included in Classes 23, 24, or 38.
- CLASS 26. Linen and hemp yarn and thread.
- CLASS 27. Linen and hemp piece goods.
- CLASS 28. Linen and hemp goods not included in Classes 26, 27 and 50.
- CLASS 29. Jute yarns and tissues, and other articles made of jute not included in Class 50.
- CLASS 30. Silk, spun, thrown, or sewing.
- CLASS 31. Silk piece goods.
- CLASS 32. Other silk goods not included in Classes 30 and 31.
- CLASS 33. Yarns of wool, worsted, or hair.
- CLASS 34. Cloths and stuffs of wool, worsted or hair.
- CLASS 35. Woolen and worsted and hair goods not included in Classes 33 and 34.
- CLASS 36. Carpets, floorcloth, and oilcloth.
- CLASS 37. Leather, skins unwrought and wrought, and articles made of leather not included in other classes.
- CLASS 38. Articles of clothing.
- CLASS 39. Paper (except paperhangings), stationery, and bookbinding.
- CLASS 40. Goods manufactured from india rubber and gutta percha not included in other classes.
- CLASS 41. Furniture and upholstery.
- CLASS 42. Substances used as food, or as ingredients in food.
- CLASS 43. Fermented liquors and spirits.
- CLASS 44. Mineral and aerated waters, natural and artificial, including ginger beer.
- CLASS 45. Tobacco, whether manufactured or unmanufactured.
- CLASS 46. Seeds for agricultural and horticultural purposes.
- CLASS 47. Candles, common soap, detergents; illuminating, heating, or lubricating oils; matches, and starch, blue, and other preparations for laundry purposes.
- CLASS 48. Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).
- CLASS 49. Games of all kinds and sporting articles not included in other classes.
- CLASS 50. Miscellaneous:
- (1) Goods manufactured from ivory, bone or wood, not included in other classes.

- (2) Goods manufactured from straw or grass, not included in other classes.
  - (3) Goods manufactured from animal and vegetable substances, not included in other classes.
  - (4) Tobacco pipes.
  - (5) Umbrellas, walking sticks, brushes, and combs.
  - (6) Furniture cream, plate powder.
  - (7) Tarpaulins, tents, rick-cloths, rope, twine.
  - (8) Buttons of all kinds other than of precious metal or imitations thereof.
  - (9) Packing and hose of all kinds.
  - (10) Goods not included in the foregoing classes.
- Marking Goods: "Registered Trade Mark."

### *Legal Proceedings.*

In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favor of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question, the proprietor of the said trade mark on obtaining a final order or judgment in his favor shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the Office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

### *Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The "Merchandise Marks Act, 1887," was passed with the object of preventing the false marking and false trade description of goods. It is an offense under the Act to forge a trade mark,

o. to make or have in possession any machine or other instrument for the purpose of forging a trade mark. It is also an offense to apply any false trade description to any goods, or to be in possession for sale of any goods, to which a false description or trade mark has been applied.

A "trade mark" is defined so as to include foreign trade marks entitled to protection in the United Kingdom as well as trade marks registered in the United Kingdom.

A "trade description" is defined as meaning any description, statement, or other indication, direct or indirect,—

(1) As to the number, quantity, measure, gauge, or weight of any goods;

(2) As to the place or country in which the goods were produced.

(3) As to the mode of manufacture of such goods;

(4) As to the materials of which they are composed; or

(5) As to their being the subject of any existing trade mark or copyright.

A "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied.

An application includes not only a direct application, but an application to any cover, label, etc., in or with which the goods are sold, and also placing goods in any cover, label, etc., to which a trade mark or trade description has been applied.

Offenses under this Act are punishable by imprisonment and by a fine and forfeiture of the goods concerned. It is competent to any one to put the law in motion for the punishment of the offender, and under "The Merchandise Marks Acts, 1891 and 1894," the Board of Trade and the Board of Agriculture respectively are authorized to prosecute at the public expense in cases affecting the general interests of the country, or of a section of the community or of a trade.

The Act prohibits the importation of all goods which if sold would be liable to forfeiture, viz: goods to which a false trade mark or a false trade description has been applied. The interests of foreign manufacturers and trading communities are thereby safeguarded in that the prohibition applies to imported goods bearing directly or indirectly an indication of manufacture or production in a foreign country other than the foreign country in which the goods were actually manufactured or produced, while as regards the importation of goods falsely bearing an indication of British origin, the Act expressly prohibits the importation of "all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or pro-

duced." In this way Great Britain has given effect to the stipulations of the International Conventions for the Protection of Industrial Property, signed at Paris in 1883, and at Brussels in 1900, and of the arrangement of Madrid, 1891, for the prevention of false indications of origin on goods.

But while "The Merchandise Marks Act, 1887," prohibits the false marking and false trade description of all goods, whether home or foreign, it does not prescribe the compulsory marking of the country of origin of imported goods, and consequently the Customs Regulations provide that "goods imported into the United Kingdom which do not bear any mark whatever, either on the goods themselves or on the coverings containing them, are not subject in any way to the Act, and therefore need not bear any statement or indication such as "Made Abroad." "Made in Germany," etc.

#### DECISIONS.

##### *Priority of Use.*

The mark applied for was the word "Multigraph," claimed to have been in use by the applicants for eighteen years in Great Britain and elsewhere, and of this fact there seemed to be no question. The opposition seemed to have been based upon the sole ground that the mark had for some years prior to the application been in use by the opponent, although the latter's use of the mark was very much later than the applicant's, having in fact, covered a period of only about two years. The court remarked:

"The argument against the decision of the Registrar was founded on the proposition that where, at the time of the application for the registration there is, however recently, another person who is using either the trade mark, or a name identical with the trade mark, the court will not proceed to register, but will require the applicant to enforce such rights as he has at law before dealing with the matter at all. That argument is obviously based on the idea that outside of registration there can be no proprietorship of a trade mark. and that the only possible claim of the applicant is a claim for passing off which must be decided before registration could be obtained."

The court finds from an examination of the statute, however, that this contention is without foundation. Citing several sections of the Trade Marks Act, and particularly Section 41, which provides that the registration of a trade mark shall not in any way permit the registrant to interfere with or restrain the use of a similar trade mark by any person who has used the same at a date prior to the use of the mark by the registrant thereof, and Section 42, which provides that no proceeding shall be brought to prevent or recover damages for infringement of

an unregistered trade mark, except in certain specific cases, the court concludes that, while there is a prohibition against the recovery of damages or the prevention of infringement prior to registration, the statute does not, by any means, ignore the right of ownership acquired by priority of use. (Kenrick & Jefferson, Ltd., 26 Repts. of Pat., etc., Cases 641.)

#### *Concurrent User.*

The British Trade Mark Law, Section 21, provides that in cases of honest concurrent user of a trade mark, the same mark may be registered to two or more applicants. In 1909 a Danish firm registered the word "Alpha" as a trade mark for certain engines and in the following year an English firm applied for an order to correct the register by cancelling the mark, claiming that they had used the mark on the same goods since 1903, and prior to any use of the mark by the Danish firm in Great Britain. The evidence showed no use of the Danish firm prior to 1908, although they claimed that they had used the mark outside of Great Britain for a much longer period than the English firm had used it, and that this fact made a case of concurrent user, to be dealt with by the registrar in accordance with the provisions of the statute governing such cases. The Danish firm offered to submit to any reasonable limitation of their use of the word, as for example, by prefixing thereto the word "Danish" and restricting the use of the mark to such engines as it had heretofore been used upon. Nevertheless, it was held that this was not a case of concurrent user and an order was made directing the cancellation of the mark. (Hoemouller, Rep. of Pat., etc., Cases, 1911, p. 249.)

#### *Descriptive Terms.*

A firm that had for many years been engaged in the sale of waterproof garments sought to enjoin the defendants from selling goods or overcoats under the name of "slip-on," or from otherwise passing off their goods as goods of the plaintiff. Plaintiff claimed that it had adopted the mark in the year 1894 and had used it continuously since then upon waterproof garments. That by reason of such use, the name had become distinctive of the plaintiff's garments and meant, both to the trade and the public, garments of the manufacture of the plaintiff, and none other. That the defendants were selling goods of their own manufacture under that mark, whereby the public were likely to be deceived into the belief that the goods were the plaintiff's goods. The defendants claimed that the word "slip-on" was a common English word in general use, having reference only to a particular cut or fit. That it had been in use in that sense long before its use by the plaintiff and that the defendants

had only used it in its descriptive sense and in its ordinary meaning. No evidence of deception was offered and the plaintiff's case rested entirely on the probability of deception. The court said that, in passing upon the rights to use a word of this character, its prima facie descriptive nature should be taken into account, as also the manner in which it was used by the defendants, whether as a distinguishing mark for their goods, or simply to denote or describe the kind of article. Having in view the history of the word and its use for a matter of a century, both publicly and in the trade, the court said that there was no probability of deception arising from the defendant's use of the term. (*Burberry's vs. Cording Co. Ltd.*, XXVI Rep. of Pat., etc., Cases 693.)

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Upon an application for the alteration of certain registered trade marks by the addition of the words "Incorporated by Royal Charter, 1773," the High Court of Justice, Chancery Division, upheld the decision of the registrar in refusing to register the mark because it included the word "Royal," the use of which in a trade mark is absolutely prohibited by the rules. The court thought that the reason of the rule was to prohibit the registration as part of a mark of any words calculated to lead to the belief that the applicant enjoyed royal patronage and holds that the registrar had acted wisely and rightly in refusing the registration. The rule is not limited to cases where the use of the word would be erroneous, or a false description of the goods. (*Ex parte, Carron Co.*, *The Times*, London, April 28, 1910.)

The word "Diamine" as a trade mark for dyes is descriptive, being a well known chemical term, indicating a certain composition, although for upwards of twenty years it was known in the trade as indicative of the goods of a particular manufacturer. It was said that the applicant cannot derive any advantage from the fact that the word is intelligible only to persons having some knowledge of chemistry and that the mark was properly refused registration. (*Cassella & Co.*, *The Times*, London, May 10, 1910.)

*Schweppe's Soda Water Case.*

Action for passing off Defendant's goods as Plaintiff's.—Alleged similarity of get-up.—Copying by Defendant held not proved. Probability of deception not established.

Schweppe Company, Ltd., sold soda water in bottles with a neck label around them, the body of the label being of chocolate color, with a white border and a red medallion in the center of the label. The defendant subsequently sold soda water in bottles with a somewhat similar neck label around them of the same color, and with a central red medallion. Schweppe's labels had "Schweppe's Soda Water" printed on them in white char-

acters. The defendant's had "Gibbens' Soda Water." The medallions in the center also differed. An action having been brought by Schwebpe against Gibbens, held at the trial that the plaintiffs had not established that the defendant's labels were calculated to deceive, and the action was dismissed with costs.

The higher court rested its decision upon substantially the same ground as the lower court, holding that confusion would result only in a case where the purchaser failed to examine the labels upon the bottles. A person must, as the court said, "treat the label fairly" and must not purchase without sufficient consideration and without examining what appears upon the face of the label. If he does so, whatever confusion does result is not the fault of the maker of the goods. ("Schwebpe's Ltd., vs. Gibbens, 22 Rept. of Pat., etc., Cases, 601.)

#### *Liability for False Claim to Trade Mark Registration.*

Section 67 of the British Trade Marks Act of 1905, provides that any person who represents a trade mark as registered which is not so registered, whether by the use of the word "registered" in connection with the trade mark, or otherwise, shall be liable for every offense to a fine not exceeding five pounds.

In a prosecution instituted in the Sheffield Police Court under this section, a dealer who had placed on sale a food under the name "Milxo" which, on the boxes, was falsely stated to be a registered trade mark, was convicted and fined three pounds. The dealer sought to excuse himself in this instance, by claiming that he had written to the Registrar of Trade Marks to know whether the mark could be registered and had gone on with the use of it, marking the labels "registered" in anticipation of the registration he contemplated making.

#### *Conflicting Trade Marks.*

The High Court of Justice, Chancery Division, had held that the word "Colonel" was not infringed upon by the use of the word "Colonial" as a trade mark for the same goods, to-wit: golf balls. The court points out, in distinguishing the two marks, that the former is a word of three syllables, invariably accented on the first syllable, while the second is a word of four syllables, accented on the second syllable, and, accordingly, that the words are entirely dissimilar in sound when pronounced. Moreover there is no common association by the ear of any sort or kind attaching to the meaning of the two words. Therefore, it would seem to be impossible that any person of reasonable capacity should be misled by such similarity as exists between the words, for, whether printed or spoken, both to the eye and ear, they represent two totally distinct things. (St. Mungo Mfg. Co. vs. Viper & Recovering Co., 27 Rep. of Pat., etc., Cases, 120.)



The Appeals Court has unanimously upheld the claim of the Carthusian monks to the exclusive right to use the word Chartreuse in Great Britain as describing the famous liquor, thus reversing the decision of the lower court. It also condemned the defendants to pay the costs of the action and enjoined them from using the name Chartreuse.

The court ordered further that an inquiry be made to ascertain the damage sustained by the Carthusians by the defendants' illegal use of the name.

*"Gramophone" a Generic Term.*

The British High Court of Justice, Chancery Division, has held upon an application by the Gramophone Co., Ltd., to register that word as a trade mark, that although in the trade that word distinguishes the goods of the applicant, yet, to the general public, it merely denotes a disk machine as distinguished from a cylinder machine without any reference to the source of manufacture. The court said it could not see that the word was any more adapted to distinguish the manufacturer of the goods, than the word "match" was to distinguish the matches of one maker from those of another; that is to say, the name by which an article is popularly known should not be entitled to registration, although the trade may understand it as the name of an article of a particular manufacturer.

*The Limitation to Classes.*

It is a familiar fact that in the United States law the registration of a trade mark is confined to the goods upon which the mark has been used by the applicant prior to registration. In Great Britain this is not so. A classification is in force similar to that used in the United States Patent Office, but instead of confining the registration to the goods upon which the mark has been used by the applicant, registration is permitted irrespective of use and may be made to cover all the goods in any class. This is, however, because the law regards registration as equivalent to use. The law does not permit the registrant to monopolize the mark for all goods in the class for which he has registered, unless he makes use of the mark upon those goods. Where he has failed to do so, the scope of his registration may be limited upon the motion of any interested party, to the goods upon which the mark has actually been used by him.

The operation of the Act in this respect was shown in a case before the Chancery Division of the High Court of Justice. A trade mark had been registered for all the goods in Class forty-two, consisting of the name "John Bull" with the figure of John Bull. Another firm were large manufacturers of toffee and sweetmeats, which they had for a long time sold under a similar trade mark. They having applied for the registration of the mark for

the goods in question which fell in Class Forty-two, the application was refused, because of the earlier registration of the same mark for all the goods in that class. The registrant, having refused to accede to their request to limit his registration so as to exclude toffee and sweetmeats, a motion was made to limit the registration accordingly. After some discussion as to the question of whether the goods excluded should be confectionary or sweetmeats, in view of certain malt products manufactured by the registrant and sold for use in the manufacture of candy, an order was made limiting the registration so as to exclude toffee and confectionary, with costs against the registrant. (Paine & Co., Ltd., 25 Rep. of Pat., etc., Cases, p. 329.)

*Unauthorized use of "Red Cross" and "Geneva Cross."*

An Act to make such amendments in the Law as are necessary to enable certain reserved provisions of the Second Geneva Convention to be carried into effect.

(18th August, 1911.)

WHEREAS, His Majesty has ratified, with certain reservations, the Convention for the amelioration of the condition of the wounded and sick of armies in the field, drawn up in Geneva in the year one thousand nine hundred and six, and it is desirable, in order that those reservations may be withdrawn, that such amendments should be made in the law as are in this Act contained;

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (a) As from the commencement of this Act it shall not be lawful for any person to use for the purposes of his trade or business, or for any other purpose whatsoever, without the authority of the Army Council, the heraldic emblem of the red cross on a white ground formed by reversing the Federal colors of Switzerland, or the words "Red Cross" or "Geneva Cross," and, if any person acts in contravention of this provision, he shall be guilty of an offense against this Act, and shall be liable on summary conviction to a fine not exceeding ten pounds, and to forfeit any goods upon or in connection with which the emblem or words were used.

(b) Where a company or society is guilty of any such contravention, without prejudice to the liability of the company or society, every director, manager, secretary, and other officer of the company, or society, who is knowingly a party to the contravention shall be guilty of an offense against this Act and liable to the like penalty.

(c) Nothing in this section shall affect the right (if any) of

the proprietor of a trade mark registered before the passing of this Act, and containing any such emblem or words, to continue to use such trade mark for a period of four years from the passing of this Act, and, if the period of the registration or of the renewal of registration of any such trade mark expires during those four years, the registration thereof may be renewed until the expiration of those four years, but without payment of any fee.

(d) Proceedings under this Act shall not in England or Ireland be instituted without the consent of the Attorney-General.

(e) This Act shall extend to His Majesty's possessions outside of the United Kingdom, subject to such necessary adaptations as may be made by Order in Council.

2. This Act may be cited as the Geneva Convention Act, 1911.

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## GREECE

The area of the kingdom of Greece (including the Ionian Islands) is about 24,600 English square miles. The population in 1911 was estimated to be about 3,100,000.

COMMERCE—The staple product of the country is currants, and upon this crop the prosperity of the country almost entirely depends. The rest of the exports consist chiefly of olive oil, olives, sponges, minerals, zinc, tobacco, wine, lead and valonia.

The imports consist chiefly of cereals, textile goods, coal, minerals, timber, codfish, chemicals, live stock, etc.

MONEY—Drachmas=100 lepta=9.6d. (nominal value)=19 cents United States. The currency drachma is worth about 6d., but varies=12 cents United States.

WEIGHTS AND MEASURES—Oke=2.8 lbs. avoirdupois=1.280 kil. Dramion=0.111 ounce=0.0032 kil.—Oke of capacity=2.34 pints=1.515 litre.

### *Laws.*

Laws of February 10-22, 1893. Regulations of December 18-30, 1893.

### *Duration.*

Legal protection is assured for ten years from the date of deposit; by a new deposit in the same form, this term may be extended for a new period of ten years. He alone has the right to make such a deposit who has been the first to use the mark publicly and for one year without interruption. (Art. 2.)

### *Who May Register.*

Foreigners and Greek subjects carrying on their industry or commerce outside of Greece shall enjoy the benefit of this law if, in the country where they are located, there is a law for the

protection of trade marks and a diplomatic convention for the reciprocal protection of Greek trade marks. (Art. 13.)

*What May be Registered.*

Any distinctive mark of the products of industry, of agriculture, of stock breeding and of commerce in general, is considered as a trade mark. The mark may be affixed to the product itself or to the package that contains it; and the name of a manufacturer or merchant or the firm name of either shall be considered as a trade mark. (Art. 1.)

*Mode of Application.*

Application must be made by the applicant or by his attorney. Full address of the applicant must be given, together with a description of the principal establishment, statement for what products the trade mark is intended, in what manner the trade mark is placed on the product, whether on itself or on wrappers, bottles, etc., if, for instance, the trade mark is printed on paper and attached to the products or to wrappers, and in what other manner the trade mark is utilized, whether the printing or impression of the trade mark is made in the original size; three copies of the mark upon detached paper 8x10 cm., electrotype of the same dimensions.

*Documents Required.*

Certified copy of home registration, legalized by Greek Consul; legalized power; three copies of the mark and a metal typographic block.

Provided that it shall be necessary for the enjoyment of this privilege in Greece, besides the deposit of the mark, (1) to produce a certificate from competent local authority, authenticated by the Greek Consul, establishing the fact that the formalities have been accomplished required by the laws of the applicant's country to secure protection of the mark; (2) to elect a domicile at Athens before a notary; (3) to declare in writing that the applicant submits to the jurisdiction of the Athenian tribunals. The effect of protection in Greece shall terminate when the period of protection fixed by law shall expire, or if the Diplomatic Convention for Reciprocity shall cease to be in force. In no case can foreigners or Greeks residing abroad have a larger protection in Greece for their trade marks than they enjoy in the country where their establishment is situated. (Art. 13.)

*Assignments.*

The title to a trade mark cannot pass to another except with the right to deal in the product. This transfer shall have no effect with respect to third parties until after the deposit and the publi-

cation of an extract from the instrument which shall verify it in the forms prescribed in Articles 2 and 4. The transfer shall also be noted on the margin of the record of deposit of the mark, and this note shall be attested by the signature required by Article 3. It shall be subject to a fee of thirty drachmas in gold, the receipt of which shall be entered on the record. (Art. 5.)

#### *Infringement and Penalties.*

The penalty of imprisonment of not less than six months and a fine not exceeding 1,000 drachmas, or either of these, shall be imposed upon—

(1) Whoever counterfeits a trade mark or makes a fraudulent use of a counterfeit mark;

(2) Whoever shall have fraudulently affixed to his product a mark that belongs to another;

(3) Whoever, without counterfeiting a mark, shall have made an imitation of a nature to deceive or shall have used such imitation.

(4) Whoever shall have knowingly sold or put on sale an article bearing a counterfeit mark.

Public prosecution for the offenses contemplated in this article cannot be instituted until ten days after the insertion in the Official Journal required by Article 4, and for an act committed after the expiration of that period. Nevertheless, the depositor can from the day following the deposit sue in a civil action for the judicial recognition of his right to the exclusive use of the mark, and then offenses committed subsequent to legal notice of the civil action may be prosecuted even in advance of the publication in the Official Journal. (Art. 6.)

The penalties ordained hereafter may be doubled in the case of repetition of the offense when the latter shall occur within five years from the date of the earlier. (Art. 7.)

The court shall order that every judgment be inserted at the cost of the offender in two journals at the capital, if the offense has been committed in Athens, or if elsewhere, in one journal of Athens and another of the place where the offense was committed. (Art. 8.)

The court shall order in every case—even in that of acquittal—the destruction of the counterfeit marks. If the mark cannot be destroyed without injury to the article to which it is affixed, the court may order the total or partial destruction of the article also. (Art. 9.)

Beside the penalties above named, whoever shall infringe the present law shall be bound to make good the damage he has caused the merchandise bearing a counterfeit mark and the instruments employed to perpetrate the offense may be awarded by the court to the injured party, if they belong to the guilty person; and if the injured party has commenced an action for damages

and has accepted same, upon a summary valuation made by the court, for the whole or part of the compensation. (Art. 10.)

No public prosecution can be instituted but on the complaint of the injured party. (Art. 11.)

The registry of a mark which shall not have been made in conformity with the provisions of the present law may be declared void by the tribunal by whose clerk it may have been registered, on the demand of any interested third party. The extract from the judgment shall be entered, at the instance of the complainant, on the margin of the record, within one month from the date when it shall be in force, under penalty of a fine of not less than twenty-five drachmas. Every private dispute resulting from an action under this law shall be determined by the tribunal of first instance as an affair of commerce, unless it shall have been instituted, simultaneously with the public suit, before the tribunal correctionel. (Art. 12.)

An indemnity shall be paid from the public treasury to the clerks of tribunals of the first instance in the sum of two drachmas for each record of deposit, and to the Director of the School of Industrial Arts in the same sum for each mark registered. These functionaries shall submit triennial statements, under supervision of the superior hierarchs, to the Minister of the Interior, who shall give them orders for payment. (Art. 14.)

All provisions in conflict with this law are abolished. (Art. 15.)

A royal decree will prescribe in fuller detail the deposit, the publication and the exhibition of the marks, as well as everything concerning the execution of this law. (Art. 16.)

Criminal action is prescribed after one year, as is the case with all injustices subject to criminal charges (Articles 119, 120. par. 2, 121 Common Criminal Statutes).

Civil action is subject to the thirty-year limitation of the Roman and Imperial Right.

The Court of First Instance is formed by the President, two Justices, the Prosecutor and the Secretary.

The Court of Appeals by the President, four Justices, the Prosecutor and the Secretary.

The Court of Peace by the Justice of the Peace and the Secretary.

The Areopagus (Supreme Court) by the President or Vice-President, six Justices, the Attorney-General and the Secretary.

*\*Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No laws are in force to prevent the sale or importation of goods bearing a false indication of origin, but some of the Articles of the Penal Code relating to fraud might possibly be applicable. The fraudulent application of another person's mark to articles of commerce and the sale, exhibition for sale and circulation of

articles bearing fraudulently imitated or counterfeit marks are punishable offenses. If the articles of the Penal Code were held to apply, proceedings would have to be taken by an injured party who would have to prove that he had sustained actual damage. No steps are taken to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods to show the country or place of origin, or to denote that they are foreign.

#### *Decisions.*

The house of J. & P. Coats, of Paisley, Scotland, had registered certain trade marks in Greece, but in proceedings brought by them against infringers these registrations had been declared void, because of certain irregularities in the registration. Following this decision they caused their marks to be registered anew in that country. Before the second registration, the infringing mark had been registered by their competitor. In a criminal proceeding instituted by Messrs. J. & P. Coats against the infringers, the latter defended on the ground that their registration being prior in point of time, their right to the use of the mark was superior. The question turned on the construction of the words used by the Greek law, "The first who has previously made use of the mark," in referring to the persons authorized to register. The criminal court, construing this passage, held that priority of registration in Greece conferred no right of property to the mark superior to that of one who had made use of the mark earlier; that such priority of use was the only basis of property in the mark and that, as the boundaries between the countries of the complainant and defendant had been for the purposes of this decision abolished by international treaties, it made no difference that the earlier use of the complainant was in a foreign country and not in Greece.

Accordingly, the defendants were sentenced to four months imprisonment and to the payment of a fine of 1,000 drachmas and their registration was declared void. (*La Propriété Industrielle*, 1904, p. 189.)

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## GRENADA

The area of this island (including its dependencies) is 133 square miles, with an estimated population of 72,682 on 31st December, 1911.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

#### *Laws.*

Merchandise Marks Ordinance of 1889, No. 9.

*Duration.*

Fourteen years; renewable.

*What May Be Registered.*

Everything registrable in Great Britain under the British Act of 1883 may be registered in Grenada.

*Requirements.*

Power of attorney; copy of the mark; electrotype or wood cut.

*Penalties.*

Under the present Merchandise Marks Act passed in 1887, which was a re-enactment of an Act passed in 1862, these Acts can be regarded in part as a Criminal Act and in part as a Customs Act. It is a Criminal Act in so far as it imposes penalties on persons who imitate trade marks.

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## GUATEMALA

The Republic of Guatemala is situated on the Pacific Coast of Central America. It has an area of 164,200 sq. kiloms., about 42,000 English square miles, with 185 kiloms. of coast on the Atlantic and 260 kiloms. on the Pacific, and a population in 1911 of 2,000,000, two-thirds of whom are Indians. The capital is Guatemala, situated about 80 miles from the sea, population about 100,000. Other important cities are Quezaltenago, Antigua, Coban, San Marcos and Chiquimula. A railway connects the capital with the port of San Jose on the Pacific, and a railway connects it with Port Barrios, called formerly Santa Tomas, in the bay of Honduras.

The exports consist chiefly of coffee, cane, sugar, cocoa and bananas; gold, silver, iron, copper, lead, marble, gypsum, rubber, sulphur and salt, the natural products of the country, and wheat, oats, barley, Indian corn and beans. Large quantities of excellent lumber are to be found in the virgin forests all over the Republic. In the forests near the coast may be found mahogany, cedar, walnut, ebony and many other fine and hard woods; cypress, pine and oak in the mountains. Logwood abounds in the department of Peten.

MONEY—1 Peso (100 centavos)=2s. 8d.=56 cents.

For weights and measures the metrical system has been adopted.

*Law.*

Law: May 13, 1899.

*Duration.*

Ten years; renewable every ten years.



*What May Be Registered.*

The following shall be considered trade marks: Denominations of objects, or names of persons, under a particular form, emblems, monograms, engravings or prints, seals, vignettes and reliefs, letters and numbers with special design, boxes or wrappers of objects, and all other signs by which it is desired to distinguish the articles of a factory or the objects of a business. (Art. 1.)

The following shall not be considered trade marks:

1. Letters, words, names, or distinctive signs that are or should be used by the state alone.
  2. The form given to the product by the manufacturer.
  3. The color of the products.
  4. The terms or phrases that have passed into general use.
  5. Designations usually employed to indicate the nature of the products or the class to which they belong.
  6. Designs and expressions contrary to morality. (Art. 3.)
1. The coat of arms of the Republic, or of any other country, except by authority of the respective government.
  2. The portrait of any person other than the manufacturer or tradesman, unless it is with his consent.
  3. Distinctive signs that admit of confusion with other registered marks. (Art. 12.)

*Requirments.*

Legalized power of attorney; certified copy of original registered trade mark; ten copies of the mark.

*Mode of Application.*

All those desiring to obtain the ownership of a mark must apply for it to the Department of Fomento. (Art. 13.)

The application for a trade mark shall be drawn up on stamped paper of the corresponding class and must be accompanied:

1. By two samples of the mark or the distinctive sign.
2. By a description in duplicate of the mark or sign, if it consists of figures or emblems, it being necessary to indicate the class of objects for which it is intended, and whether it is to be applied to products of one factory, or to objects of commerce.
3. By a receipt of the National Treasury showing that the tax established by Article 22 has been paid. This tax shall be returned in case the registration of the mark is refused.
4. By a power of attorney executed in due form, in case the interested party does not appear personally. (Art. 14.)

The application for the ownership of a mark shall be published for one month in the official newspaper and shall then be referred for consideration and report to the Office of Trade

Marks. If no opposition is made, and the report is not unfavorable, an executive decree shall be issued ordering the registration of the mark. The original record shall then be sent to the Trade Mark Office, in order that the registration should be made in proper form, that a notice of the number, page, and book of the registry should be written on the original record, and that all the papers of the case be preserved in the archives. The certificate of the inscription, accompanied by one of the copies of the registered mark, shall serve the owner as evidence of his ownership. (Art. 18.)

#### *Fees.*

For the registration and certificate of a mark, whatever its origin may be, a fee of \$30 (pesos) shall be paid. For the registration and certificate of transfer the fee shall be \$15. For each copy of the certificate \$5 shall be paid, in addition to the value of the stamped paper which is to be used. These fees shall be paid into the National Treasury. (Art. 22.)

#### *Nullification of a Trade Mark.*

Third parties can apply for the nullification of a mark:

1. When the inscribed possessor has not within the term fixed by Article 11 continued to exercise the industry to which the mark belongs.

2. When there are circumstances that lead to the belief that the tenor of the mark does not correspond to its real products, the risk of misrepresentation being thus imminent. (Division 3, Art. 34.)

3. The petition for the nullification of a mark shall be filed before the courts, and the inscribed possessor, or his heirs, in case of death, shall be made defendants. (Art. 32.)

If, before or after the commencement of the suit, the mark is transferred to another person, the case shall continue to the end against those who have succeeded to the right. (Art. 33.)

#### *Penalty.*

The following shall be punished as provided in Paragraph II, Title III, Book II of the Penal Code:

1. Those who counterfeit or imitate in any way a trade mark.

2. Those who place on the products or articles belonging to their business a mark belonging to another person.

3. Those who knowingly sell, place on sale, offer for sale, or circulate, articles with counterfeited marks or with marks fraudulently applied.

4. Those who knowingly sell, place on sale, or offer for sale, counterfeited marks, and those who sell authentic marks without knowledge of their proprietor.

5. Those who with fraudulent intention place, or cause others

to place, on an article of merchandise a false announcement or designation relating to the registration of the mark, or to the nature, quality, quantity, number, weight or measure, of the same article, or the place or country in which it has been made or prepared.

6. Those who knowingly sell, place on sale, or offer for sale merchandise with any of the false announcements mentioned in the preceding item. (Art. 34.)

The offense shall be deemed committed in full even if the counterfeited trade mark is not affixed to all the objects that are to be marked. Its application to one alone shall be sufficient. (Art. 35.)

#### *Assignments.*

The property in a mark passes to the heirs and may be transferred by contract or by disposition of last will and testament, provided always the formality is fulfilled that is referred to in Article 10 of this law. Unless the transfer is noted in the register the successor cannot make valid the absolute right to which Article 4 refers. (Art. 7.)

(Article 4—The absolute property in the mark, as well as the right to oppose the use of any other which might directly or indirectly produce confusion between the products, will belong to the manufacturer or merchant who shall have fulfilled the requirements demanded by this law.)

The cession or sale of the establishment includes that of the mark except in case of stipulation to the contrary, and the assignee has the right to use the mark that designates it (the establishment) even though it be a name, in the same manner as the assignor, without other restrictions than those that are expressly imposed in the contract of sale or cession. (Art. 8.)

The contract for assignment of a mark must be inscribed in the office in which it is registered to acquire the rights that this law confers for registered marks. (Art. 9.)

There will only be considered as a registered mark, for the effects of property that this law accords, one of which the office has made the corresponding inscription. (Art. 10.)

#### *Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The law prohibits the marking of goods with false indications of origin, as well as the sale or offering for sale of goods so marked. The sale of goods bearing a false trade name or trade mark is a punishable offense. A trader in prosecuting for the above offenses would not encounter any great difficulty in obtaining a conviction. Prosecution is expensive. No steps are taken officially to prevent the importation of goods bearing false

indications of origin. There are no requirements as to the marking of imported goods to show the country or place of origin or to denote that they are foreign.

Marking of Goods: "Marca Registrada."

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## HAWAII

The territory of Hawaii was annexed by the United States of America in 1898, and forms now one of the Territories of that Republic. It is situated in the North Pacific, between latitude 19° and 22° north and longitude 154° and 160° west, and consists of a group of eight islands of which Hawaii is the largest. The total area of the group is about 6,700 square miles, and the population is estimated at 191,909.

Nearly the whole of the trade is carried on with the United States of America, owing to the protective tariff of the United States, which has been extended to these islands.

MONEY—1 Dollar (100 cents)=4s. 2d.= \$1.00 United States.

WEIGHTS AND MEASURES—The metric system has been adopted.

### *Hawaiian Trade Mark Registrations.*

The Territory of Hawaii forming part of the United States, the United States trade mark law is in force there to the same extent as in other portions of our territory and the same rights and remedies under registration in the United States Patent Office are enjoyed before federal courts of that Territory as are enjoyed elsewhere in the United States. There is, however, a local law for the registration of trade marks there, which is similar to the trade mark registration laws in force in many of the states of the Union.

This statute appears to be confined in its operation to labels, and does not extend to trade marks as we commonly understand the term. It provides that any person, firm or corporation desiring to secure the exclusive use of any print, label or trade mark upon any goods "to indicate the name of the manufacturer, the contents of the packages, the quality of the goods or directions for use, may obtain a certificate of the registration of such print, label or trade mark." It will be seen that this provision of the statute contemplates the registration of a complete label and that a technical trade mark consisting of an arbitrary name or design, would not come within the provision of the statute.

The statute provides that on complying with the requirements of the law as to the form of application, the applicant shall be entitled to a certificate of registration, and that this certificate of registration shall secure the applicant exclusive use of such print, label or trade mark throughout the Territory of Hawaii,

for the term of twenty years from the date thereof. (Rev. Stat. of Hawaii, 1905, 2671-2674.)

The principles of trade mark law laid down by the Supreme Court of Hawaii in a case decided by that court in the year 1895, indicate that, so far as technical trade marks are concerned, the common law, as in force in the United States is applied there, and that the law of unfair competition, as we understood it in the United States, will be enforced in the courts of that Territory. In the case in question, the court declares that the registration of a trade mark is not essential to its ownership, nor to the right to sue for infringement, the object of the registration being merely to confer a convenient method of proving adoption of the trade mark. The case before the court was one of unfair competition involving the title of two newspapers, one of which, it was claimed, was made to unfairly resemble the other. The case was decided in favor of the defendant upon the ground that there was no such resemblance between the two titles as would cause any confusion or induce the purchase of the defendant's paper in the place of the plaintiff's. (Gear vs. Kenyon, 10 Hawaii, 162.)

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## HONDURAS

The Republic of Honduras contains approximately 47,000 English square miles.

The population in 1911 was about 700,000. It has a coast line of nearly 400 miles on the Caribbean Sea. Chief ports: Truxillo, Puerto Cortes, Omoa, Roatan and La Ceiba, but only a small portion on the Gulf of Fonseca on the Pacific side. Chief port, Amapala. The country is mountainous, being traversed by the Cordilleras. The products are mahogany, fruit, cattle, cotton, sugar, tobacco, coffee, indigo, sarsaparilla, hides and skins, india-rubber, cedar, fustic, rose and lima wood. Its mineral wealth is great. A railway 57 miles long runs from Puerto Cortes to San Pedro Suia and La Pimienta, which is being joined up with the main railway, connecting the Atlantic with the Pacific. All importations for the capital are done by the port of Amapala on the Pacific side. Trade principally with the United States of America.

**MONEY**—The monetary unit is the gold dollar (100 centavos)=4s.=96 cents. The silver dollar=1s. 7d. (about)=38 cents.

For weights and measures the metrical system has been adopted.

### *Law.*

Trade mark law of March 7th, 1902.

*Term.*

The duration of the ownership of a trade mark is indefinite; but it shall be considered abandoned by the closing for more than a year of the establishment, factory, or business in which it may have been employed, or the failure of the owner to produce the article during the same period. (Art. 11.)

*Who May Apply.*

He who first may have made legal use of a mark, is the only one who may claim to acquire its ownership. In case of dispute between two proprietors of the same mark, the property shall belong to the first possessor, and if the possession can not be proven, to the first applicant. (Art. 7.)

*Mode of Application.*

In order to acquire the exclusive property to a trade mark, the interested party shall present, either himself or by means of his representative, to the Secretary of Fomento, a statement showing that he reserves it according to his right, accompanied with the following documents:

1. The power given to the attorney, if the interested party does not personally appear.
2. Two copies of the mark or of its representation by means of a drawing or an engraving.
3. In the case where the mark is put in low or high relief upon the products, or where it presents any other peculiarity, there shall also be remitted two separate sheets in which such peculiarities shall be indicated, either by means of one or various figures or by means of an explanatory description.
4. The written commission contract, by virtue of which the agency may have been established, duly legalized, in the case referred to in the second paragraph of the preceding article. (Art. 4.)

The application shall set forth the name of the factory, the place where it is located, the domicile of the proprietor, and the kind of commerce or of industry for which the applicant desires the use of the mark. (Art. 5.)

The industrial or mercantile mark that belongs to a foreigner not resident in the Republic may not be registered in this country if it shall not have been previously and regularly registered in the country of its origin. (Art. 6.)

*Infringements.*

The crime of counterfeiting shall be committed:

1. When trade marks are used that are exact and complete copies of another the ownership of which is already secured.
2. When the imitation is such as to produce almost complete identity, the difference being only of minor character, the mark

may be susceptible of being confounded with another legally deposited. (Art. 15.)

There shall be considered as guilty of the crime of counterfeiting, whatever may be the place where it may have been committed, those who may have counterfeited a mark, or made use of a counterfeited one, whenever it is applied to objects of the same industrial or mercantile nature. (Art. 16.)

Those guilty of counterfeiting trade marks are subject to the penalties established in the Penal and Common Code. (Art. 17.)

#### *Requirements.*

Power of attorney legalized by Consul of Honduras; two copies of the mark; certified copy of original registered mark. (Form for application may be obtained from B. Singer's Offices.)

#### *Assignments.*

Trade marks cannot be transmitted except with the establishment for whose objects of fabrications or of commerce they serve as distinction; but their transmission will not be subject to any special formality, and will be verified conformably to the rules of common law. (Art. 10.)

#### *Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No laws are in force to prevent the sale or importation of goods bearing a false indication of origin, beyond those intended for the protection of articles which have been patented or the trade marks of which have been duly registered; the falsification of trade marks and the offering for sale of goods marked with a false trade name or trade mark are punishable offenses. Prosecutions for these offenses are rare, but there would be no difficulty in procuring conviction. Judicial costs are generally small and lawyers' fees are not heavy. No steps are taken to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods to show the country or place of origin.

Marking Goods: "Marca Registrada."

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## HONG KONG

The area of this, the most eastern colony of Great Britain, is 29 square miles. It consists of the island of Hong Kong and of a portion of the mainland opposite, being the peninsula of Kowloon, to a line joining Mirs Bay and Deep Bay, besides the

waters of these bays and the island of Lantao. It is 40 miles from Macao and 90 from Canton. The population is estimated at about 450,000.

MONEY—One dollar (100 cents)=2s. 1d. nominal value=50 cents U. S.

WEIGHTS AND MEASURES—Same as Great Britain.

### *Law.*

Ordinance No. 40 of December 10th, 1909.

### *Term.*

The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this ordinance.

### *What May Be Registered.*

A trade mark must be registered in respect of particular goods or classes of goods.

A registrable trade mark must contain or consist of at least one of the following essential particulars:

1. The name of a company, individual, or firm represented in a special or particular manner.
2. The signature (in other than Chinese characters) of the applicant for registration or some predecessor in his business.
3. An invented word or invented words.
4. A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname.
5. Any other distinctive mark; but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3) and (4), shall not, except by order of the Governor or the court, be deemed a distinctive mark.

Provided, always, that any special or distinctive word or words, letter, numeral or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the thirteenth day of August, one thousand eight hundred and seventy-five, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration, shall be registrable as a trade mark under this ordinance, if it is already registered in the United Kingdom as an old mark used before the said date.



For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

#### *Mode of Application.*

(1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) In the case of an application for registration of a trade-mark under Section 9 (5) which does not fall within the descriptions in Section 9 (1), (2), (3) or (4) the Registrar shall refer the application to the Governor or to the court, at the option of the applicant, for an order thereon.

(3) Subject to the provisions of this ordinance the Registrar may refuse an application, or may accept it absolutely or subject to conditions, amendments, or modifications.

(4) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing and communicate to the applicant the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Governor or the court at the option of the applicant. The tribunal shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice.

(6) The Registrar or the Governor or the court, as the case may be, may at any time, whether before or after acceptance correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the applicant shall, as soon as may be after such acceptance, cause the application, as accepted, to be advertised in the prescribed man-

ner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

#### *Opposition to Registration.*

(1) Any person may, within the prescribed time from the date of the advertisement of an application for registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant and, within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(4) If the applicant send such counter statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the court, or, with the consent of the parties, to the Governor.

#### *Assignments.*

A trade mark, when registered, shall be assigned and transmitted only in connection with the good will of the business concerned in the goods for which it has been registered and shall be determinable with that good will. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered, together with the good will of the business therein in such goods.

#### *Renewal of Registration.*

The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

#### *Penalty.*

(1) Any person who represents a trade mark as registered in Hong Kong which is not so shall be liable for every offense on summary conviction to a fine not exceeding fifty dollars.

(2) A person shall be deemed, for the purposes of this ordinance, to represent that a trade mark is registered in Hong Kong, if he uses in connection with the trade mark the words "Registered in Hong Kong," or any words expressing or implying that registration has been obtained in Hong Kong for the trade mark.

#### *Requirments.*

Petition; declaration; power of attorney; and six copies of the mark.

#### *Status of Unrenewed Trade Marks.*

Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal be deemed to be a trade mark which is already registered unless it is shown to the satisfaction of the Registrar that there has been no bona fide trade user of such trade mark during the two years immediately preceding such removal. (Art. 31.)

#### *Non-User of Trade Mark.*

A registered trade mark may, on the application to the court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any bona fide intention to use the same in connection with such goods, and that there has in fact been no bona fide user of the same in connection therewith, or on the ground that there has been no bona fide user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect to such goods. (Art. 37.)

#### *Removal of Mark on Proof of Prior Registration in Country of Origin.*

The court may, on the application in writing made within seven years from the registration of a trade mark in Hong Kong by any person aggrieved by such registration, remove such trade mark from the register, if it is proved to the satisfaction of the court, that such trade mark is identical with, or so nearly resembles as to be calculated to deceive, any trade mark which was, prior to the registration in Hong Kong of the first mentioned trade mark, registered (in respect of goods of the same description as those in respect of which the first mentioned trade mark

is registered in Hong Kong) in a country or place from which goods of that description originate.

Provided always that no trade mark shall be removed from the register under this section in the following cases:

(a) If the proprietor of the other trade mark consented to the registration in Hong Kong of the first mentioned trade mark; or

(b) If the proprietor of the trade mark registered in Hong Kong proves that he or his predecessors in business have continuously used such trade marks in Hong Kong in connection with such goods as aforesaid from a date anterior to the date of the registration of the other trade mark in the country or place of origin; or

(c) Unless the applicant proves either that within the five years immediately preceding the making of the application under this section there has been bona fide user in connection with such goods as aforesaid in Hong Kong of the trade mark registered in the country or place of origin or that the special circumstances of the trade account for the non-user of such trade mark in Hong Kong within the same period or that the trade mark so registered in the country or place of origin was first registered there within the like period of five years, and in either event gives an undertaking to the satisfaction of the Registrar that he will within three months from the making of the application under this section apply for registration in Hong Kong of the trade mark so registered in the country or place of origin, and will take all necessary steps to complete such registration.

All applications under this section shall be heard in open court in Original Jurisdiction. (Art. 42.)

#### *Unregistered Trade Marks.*

No person shall be entitled to institute any proceedings to recover damages, for the infringement of a trade mark not registered in this Colony. (Art. 43.)

#### *User of Name, Address or Description of Goods.*

No registration under this Ordinance shall interfere with any bona fide use by a person of his own name or place of business, or that of any of his predecessors in business or the use by any person of any bona fide description of the character or quality of his goods. (Art. 45.)

#### *"Passing Off" Action.*

Nothing in this Ordinance contained shall be deemed to affect the rights of action against any person for passing off goods as those of another person or the remedies in respect thereof. (Art. 46.)

*Cost of Proceedings Before Court.*

In all proceedings before the court under this Ordinance the costs of the Registrar shall be in the discretion of the court, but the Registrar shall not be ordered to pay the costs of any other of the parties. (Art. 49.)

*Mode of Giving Evidence.*

In any proceeding under this Ordinance before the Registrar or the Governor, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which he shall think it right so to do, the Registrar or the Governor may (with the consent of the parties) take evidence viva voce in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken viva voce the Registrar or the Governor shall, in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as a Special Referee of the Supreme Court. (Art. 50.)

## POWERS AND DUTIES OF REGISTRAR OF TRADE MARKS.

*Exercise of Discretionary Power by Registrar.*

Where any discretionary or other power is given to the Registrar by this Ordinance or rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade marks in question without (if duly required to do so within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard. (Art. 53.)

*Appeal from Registrar.*

Except where expressly given by the provisions of this Ordinance or rules made thereunder there shall be no appeal from a decision of the Registrar otherwise than to the Governor, but the court, in dealing with any question of the rectification of the register shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made. (Art. 54.)

## ROYAL ARMS.

*Unauthorized Assumption of Royal Arms.*

If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be

calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorized so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such members of the Royal Family, he may, at the suit of any person who is authorized to use such arms or such device, emblem or title, or is authorized by the Governor to take proceedings in that behalf, be restrained by injunction or interdict from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietors of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark. (Art. 61.)

Marking Goods: "Trade Mark Registered."

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## HUNGARY

The kingdom of Hungary, the eastern of the two independent sections of Austria-Hungary, consists of Hungary proper, Transylvania (now completely incorporated with Hungary), Croatia-Slavonia and the territory of Fiume.

Agriculture forms the staple industry of the people, the principal crops being wheat, maize, oats, barley and rye. The country possesses great mineral wealth, iron, lignite, gold, coal, silver, and copper being mined. The principal industrial products are iron and steel machinery, earthenware, glass, flour, wines, chemicals and tobacco. The chief commercial centers are Budapest, Arad, Debreczen, Kassa, Raab, Temesvar, Klausenburg, Kronstadt, Hermannstadt and Eszek. The principal exports are flour, cereals, wine and wool, and the imports textiles, woollen goods, cotton yarn and raw tobacco. The area of Hungary, including Croatia-Slavonia, is 324,851 square kilometres, or 125,430 English square miles, and the population 20,315,174.

MONEY, WEIGHTS AND MEASURES—Same as in Austria.

### TRADE MARKS

By virtue of the provisions of a new treaty of commerce entered into between Austria and Hungary in October, 1907, new regulations regarding the registration of trade marks in these countries have gone into effect. Hitherto it has been necessary for foreign owners of trade marks to register in both countries at the same time, registration in a single country of a foreign mark not having been permitted. Hereafter, however, foreign subjects may register their trade marks either in Austria or in Hungary. This is the principal feature of novelty in the regulations.

The above regulations will enable owners of trade marks to secure separate and independent registration in Austria and Hungary instead of requiring, as in the past, that the mark must be registered in Austria and Hungary in order that the registration shall be effective in either. Registration in Hungary gives protection in Hungary, Bosnia and Herzegovina. Registration in Austria gives protection in Austria.

Hungary being independent of Austria in regard to the registration of marks, is about to enact a new law on the subject. At the present the same laws and regulations are in force as in Austria.

*Law of December 31, 1907, Effective January 1, 1908, Between Austria and Hungary.*

Commercial and trade marks, as also names, signs, coats of arms, and titles of establishments, which are used in commerce and trade shall enjoy full legal protection in both States.

The subjects of one of the States, as also persons who have their residence or their industrial establishment in the territory of that State shall, in regard to the protection of their commercial and trade marks, names, signs, coats of arms and the business titles of their establishments, and in regard to the protection of unfair competition, enjoy in the territory of the other State the same rights in every respect as its own subjects.

For domestic marks, legal protection for the territory of the other State also is acquired by the registration effected with the proper registration authorities of one of the two States without the necessity of the appointment of an attorney to the territory of the latter.

The following suits can, however, be brought not only before the proper authorities of the home State, but also before those of the other State with the legal effect of the judgment, however, for its own territory only.

(a) Suits for the nullification of a mark on account of the similarity with an older mark legally existing.

(b) Suits on account of prior use.

(c) Suits on the ground of the right to a name, coat of arms sign or title of an establishment.

(d) Suits of establishment, that is suits for the establishment of the exclusive right to the use of a mark without respect to the existence of a mark older by priority.

(e) Suits for the nullification of a mark on account of being a mark of common property, this, however, only within a term of three years, reckoned from the registration, after the expiry of which this action can only take place before the proper authorities of the home State.

The provisions for suits under (a) to (d) in the preceding paragraph holds good also for suits to declare the invalidity or nullification of the rights to designs or models, as well also for possible suits for the establishment of the rights to designs. However, the right to a design shall not be declared null if products manufactured according to the design are introduced from the territory of one of the States into that of the other or the design was used only in one of the States.

Both Ministers of Commerce, or the central authorities acting, perhaps, in their place in the future, shall monthly communicate to each other the registrations effected in the respective country, for entry in the register kept for that purpose, and for the purpose of enforcement and publication.

It shall be permitted to the administration of the central authority in charge of the protection of marks of each State to declare that one of the marks transmitted to it in the sense of Articles 3 and 4 by the authorities of the other State cannot be protected in its State.

Such a denial of protection can only take place on grounds which could be legally made to apply to a domestic mark. However, neither of the two States will deny protection to a mark registered in the other State solely for the reason that it does not satisfy the requirements in force in its territory in regard to the composition and outward appearance of marks, as long as, in this respect, it satisfies the legal provision of the other State.

Public coats of arms of the territory of one part shall not be considered as free marks in the territory of the other part. Marks which contain such coats of arms can only be registered in favor of that person who has the right to the use of such coat of arms. This applies to the representation of coats of arms which exhibit variations from the official form, so far as, in spite of these variations, confusion in trade is to be expected. These provisions find special application also to the coats of arms of the Austrian hereditary lands and to the sacred Hungarian Crown.

The employment in a mark of the language used in one of the two States will not, even when the goods are not furnished with the declaration of the place of origin, be considered as misleading in respect to the real origin of the goods, and protection on this ground alone will not be denied to a mark.

On the other hand, each of the two States is entitled to exclude from registration trade marks which in their general impression, by the employment of the national colors in their heraldic order and arrangement, or by the employment of representation of National emblems, monuments and architectural works of the State, of names or likenesses of historical persons of the State, or persons renowned in the field of political life, art or science, serve outside of the State, for the consumer, as a manifest indication of the origin of the goods, except when the true origin (place



or country) of the goods is given, or to be deduced, with equal distinctness, or at least the fact appears that they do not originate in this State.

The employment of the national colors in the composition of inscriptions, arabesques and the like, as well as for marginal lines as part of a mark will not be looked upon in itself as an indication of the origin of the goods.

Trade in an article which is provided with a registered mark admitted to protection according to the preceding provisions, as well as the employment of this mark in business notices, will not, in either of the two States, be prevented on the ground that it is misleading in regard to the origin of the article.

In deciding the question whether the get-up or designation of an article, in case it is not registered as a mark, or certain additions annexed to a registered mark, are apt to cause confusion in regard to the origin of the article, the provisions contained in the preceding articles are to be applied.

Use of the authority to refuse protection to a mark must be made at the latest within one year from the arrival of the mark sent by the authorities of the other State, and that authority shall be notified thereof. The grounds for the denial of protection must be given therewith.

The competent authorities of the State of origin shall notify the applicant forthwith of this denial of protection. Against the denial of protection the applicant is entitled to the same legal remedies as if the mark had been directly deposited by him in the State in which protection is denied it.

The terms for these legal remedies will begin to run from the delivery of the notification of the denial of protection by the authorities of the other State.

In regard to the protection of marks of foreign enterprises and of designs or models of such persons as have not their residence or their establishment in the territory of either of the States, treaties concluded with the respective States are to have effect.

It is also allowed to these enterprises and persons to deposit their marks, for one only of the two States, at the proper place of registration in Vienna or Budapest.

The priority of a mark acquired by registration effected in one of the two States, prior to the entry in force of this treaty, will remain undisturbed thereby.

Marking Goods: "Védjegy."

#### DECISIONS.

##### *Registrable Trade Marks.*

Under the law of Hungary, as in the case of most countries, marks consisting of geographical or descriptive terms are not registrable. By a recent decision, the word mark "After Dinner

Delicacy" in its German equivalent was held not registrable for biscuits and like products, because it had no distinctive force. The word "Vacuum" as a mark for filler is not registrable for the same reason. The word "Helgoland" being a geographical term, likewise fails to satisfy the requirements of the statute. (Szabadalmi Szemle, 1911, pp. 69, 83.)

The Minister of Commerce of Hungary has held the word "Force" as applied to a food-stuff, obtained from different sorts of grain, to be descriptive of the quality of the product and has accordingly refused it registration as a trade mark. (Trans. of the Int. Assn. for Pro. of Ind. Prop., 1904, pp. 268-283.)

The word "Agraria" for scythes is not registrable, because descriptive of the goods. "Agrarius" is an adjective whose feminine form "Agraria" literally means "rural," and which is familiar in its meaning among the consuming public far and wide. It is also well known in daily life, in which it is used as a symbol of occupations relating to farming, in the Hungarian language, "Agrar," in the German "Agrarisch." Therefore, the word "Agraria" does not come within the meaning of the trade mark act, because it expresses the nature of the goods, inasmuch as the tools to which it is applied are for agricultural purposes. (Austrian Patent Blatt, 1911, p. 692.)

The unwillingness of the Minister of Commerce, in view of the provision of the law excluding terms of a deceptive character, to permit the registration of any mark embodying a false suggestion that the goods so marked are of Hungarian origin, is indicated in several late decisions.

He holds that the Hungarian word "Csikós," commonly translated herdsman, is not registrable for goods of foreign origin. It is a well known fact, he says, that the raising of stock and particularly horses has played a very important part in the industrial development of Hungary, and that the word has, in the Hungarian speech, a meaning incapable of translation into a foreign language, because of the absence of any exact equivalent in any other tongue. So closely is this picturesque character interwoven with the life of the Hungarian nation, and so prominently is he identified with Hungarian poetry and art, that he is regarded not only at home but abroad, as a sort of national symbol. Hence the use of the word upon other than Hungarian goods would mislead the prospective purchaser as to their origin. (Austrian Patent Blatt, 1911, p. 161.)

The words "Honvéd," homeguard, and "Huszár," or hussár, are for the like reasons held to be deceptive and not registrable for goods that are not of Hungarian origin. In the case of a German trade mark, not particularly described, it is said to have been rejected for the reason that certain Hungarian inscriptions

thereon were calculated to mislead the purchasing public as to the origin of the goods. The effect of these decisions appears to be that no word in the Hungarian language will be admitted to registration under the Hungarian law, for goods not of native production.

The word "Ideal" can not be registered because it indicates merely the quality of the goods.

The word "Standard" is unregistrable for the same reason. (Szabadalmi Szemle, 1911, pp. 101, 123.)

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The words "Liquor Hypno Bromid" are held not to be properly registered as a trade mark. The first and last of these words indicate merely the nature and the content of the goods and are for that reason purely descriptive. The word "Hypno," although a word of Greek origin, must be considered as sufficiently familiar to the general public as to convey the significance of its Greek original, "sleep." Hence, the public would assume that the word refers to the properties of the liquor, in that it induces sleep.

The question of conflict between two marks has been handled in another decision with a very enlightened appreciation of the essential point in controversy. The registrant of a trade mark for tea sought the cancellation of a later registered mark, because in conflict with his own. The later registrant claimed many distinctive elements in his mark such that confusion between them was impossible. The earlier mark displayed several stars and the figure of a Chinese, with Hungarian and Russian inscriptions. The defendant's mark showed the single star placed between the letters G. S. These were the essential features of the two marks. It was held that the star is the characteristic element of the two marks, the part which affixes itself in the memory of the purchaser, to the exclusion of others. The figure of a Chinese in the earlier registration is not distinctive, because customarily used on tea. The same is true of the inscription in the Hungarian and Russian language and of the other decorations. Therefore, purchasers and consumers of the plaintiff's tea would know it under the designation, "star tea," and the defendant's trade mark, composed essentially of a star, must be found to resemble the plaintiff's so much as to be likely to be confused therewith. The possibility of such confusion is increased by the fact that, the plaintiff's firm name being "Gerbrüder Stein," the letters G. S. shown on the defendant's trade mark further leads the purchaser to the belief that the mark designates the goods handled by the plaintiff.

It was further held that the defendant, not having actually put upon the market any tea, his mark was not entitled to protection. Legal protection can be granted only for such goods as

are actually placed upon the market by the claimant to the mark, since only in respect of these goods is any distinguishing mark reasonably necessary or proper.

Trade marks consisting of the representation of a swan, joined with various words such as "Express," "Favorit," etc. and the numerals 1829, are held not to infringe upon the exclusive right to the use of a trade mark that consists merely of the representation of a swan swimming in the water. (Szabadalmi Szemle, 1911, p. 170.)

The protection given to a trade mark extends not alone to the particular goods for which the trade mark has been registered, but for goods of the general class to which these articles belong. Cream, laundry and toilet soap, washing powder and cleansing compound belong to the same class of goods as preparations for the hands. Therefore, one who has registered a trade mark for the latter description of articles may require that another later application for a similar trade mark is limited to other classes of goods. (Szabadalmi Szemle, 1911, p. 136.)

The principle governing the acts of the Hungarian Patent Office, that no mark can be registered for goods not of Hungarian origin, the effect of which would be to convey the impression that the goods so marked were manufactured in Hungary, is illustrated by a decision of the Hungarian Minister of Commerce under date of March 20, 1911. The application was for the registration by an Austrian firm of the name "Franz Deak," which, the Minister says, is the name of an eminent statesman, prominent in the recent history of Hungary. This name, applied to goods, would cause the consuming public to believe that the goods were of Hungarian origin, although, as a matter of fact, they were manufactured in Austria. Therefore, the mark would deceive the public as to the origin of the goods, within the meaning of the trade mark law.

The fact that the applicant had a consent to the use of the name does not make the name the more registrable, because it does not in any way alter its deceptive character. (Austrian Patent-Blatt, 1911, p. 984.)

#### *The International Convention.*

Article VI of the International Convention for the Protection of Industrial Property has been the subject of construction by the Hungarian Minister of Commerce, to determine how far the convention requires the registration in Hungary of a mark, already registered and protected in the country of its origin.

Application was made by a German firm for the registration of a trade mark consisting of the name "Andrássy." The application was refused upon the ground that while the name, as used, was not accompanied by any statement of the real place

of production, the name itself indicated a Hungarian origin. An appeal was taken to the Minister of Commerce. At the same time the applicant presented the consent of the Count Andrassy to the use of his name as a mark.

The Minister said that the consent to the use of the name was immaterial, for the question was whether or not the name was tantamount to a false indication of origin and would, therefore, deceive the public as to the source of the article. The name is that of a family which has played so important a part in the contemporary history of the country that the application thereof to any foreign product would be likely to cause deception. The consent of one of that name would in no way prevent such deception. The right to use the names of persons prominent in public life can not be bestowed by the persons themselves, when the use will tend to the deception of the public. The Minister likens such names to the arms or public insignia of the state, its public buildings or monuments.

The applicant maintained that the mark having already been registered in Germany, the Hungarian office was bound to accept the application. The Minister holds that the convention has no application to questions involving the intrinsic validity of the mark as a trade mark, which question is always subject to the local law. The decision rejecting the application was affirmed. (Austrian Patent-Blatt, 1910, p. 107.)

#### *Trade Mark Infringement.*

The Criminal Court of Budapest has held that infringement of a trade mark is proven where it is shown that the defendant has sold or offered for sale goods to which he has applied the Magyar translation of a name, which, to his knowledge, is registered as a trade mark in the name of a third person, to indicate goods of a like character. (Trans. of the Int. Assn. for the Protection of Ind. Prop., 1907, p. 127.)

A decision of the court of appeals of Debreczen, relative to a case of trade mark infringement, illustrates the principles applicable to cases of that character in Hungary. The complainant was the manufacturer of embroidery thread marked with a label bearing the letters "D. M. C." and the name of the firm "Dollfus Mieg & Co." The defendants made use of the label upon the like goods, which was practically a reproduction in appearance of the original label, bearing the letters "D. M. C." and the assumed firm name "Debreceni Mechanikai Czernagyár." They defended upon the ground that letters were not properly the subject of registration as trade marks under the Hungarian law, and that therefore they could not be punished for infringement upon the mark. To this defense, however, the court said that the mark was registered and that its validity was not to be in-

quired into in that proceeding. So long as it continued to be upon the register, it must be protected according to the law.

The intent of the parties to infringe was clearly shown, from the facts that they had in all essential particulars of appearance reproduced the complainant's label, so that the ordinary purchaser could not distinguish the two products, the one from the other; that they had assumed a firm name which they had no right to use and which represented no existing firm and had adopted it with a view to appropriating the same initials in use by the complainant. It was held that the offense of the infringement was made out and the defendants were accordingly condemned to the payment of a fine of one hundred crowns with damages and costs. (*Dollfus, Mieg & Co. vs. Isidore Beck*, *Revue Int. de la Prop. Ind.*, 1911, p. 88.)

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## ICELAND

Iceland lies near the Arctic Circle and is nearer to Greenland than to Europe. It has an area of about 39,000 square miles, or nearly half the size of Great Britain, and has a population of about 85,000.

In Iceland there are few manufactories. Some carding and spinning manufactories and several cigar manufactories have been established during the last few years, it being found most profitable to export all products in the raw state, but knitted woolen articles are exported to some small extent. The bulk of the population live by rearing sheep and cattle, and some butter is exported to Great Britain, many dairies having been established in Iceland during late years. Mutton, beef and fish are also exported. Milk in various forms is the staple food of the inland districts.

The most important industry is the fishing, which includes the salting of cod, herrings, etc., and also the production of fish oil.

The imports embrace almost every article of consumption and articles in general use.

**MONEY**—The monetary unit in Iceland is the krone=100 ore =27 cents (about).

**WEIGHT**—Pund=1.102 lbs. avoirdupois.

**MEASURES**—Pot (Liter: 0.966)=0.2126 gallon.

### *Law.*

November 13, 1903. Regulation, December 30, 1904.

The Trade Mark Law of November 13, 1903, is substantially a re-enactment of the Danish Trade Mark Law.

A number of ordinances secures protection of foreign trade marks under this new law. Iceland has lately entered into reci-

procal treaties with several countries, such as Great Britain and several British colonies.

*Term.*

Ten years; renewable. It expires with the home registration.

*Requirements.*

Power of attorney; copy of the registered Danish trade mark; three facsimiles of the mark and one electrotype. (Form for application may be obtained from B. Singer's Offices.)

## INDIA

The territory of British India, formerly administered by the Honorable East India Company, came directly under the authority of the Crown in 1858, and in 1877 Her Majesty, Queen Victoria, assumed the title of Empress of India, being succeeded in January, 1901, by H. I. M. King Edward VII of Great Britain and Ireland, and Emperor of India, who, in turn, was succeeded by George V.

The area under British administration, including Burmah, is 1,097,900 square miles, with a population in 1911 of about 315,000,000. To this has to be added an area of 690,270 square miles belonging to the feudatory States, with a population of about 70,000,000.

MONEY—1 rupee (16 annas)=1 s. 4d.=56 cents U. S.; 1 anna (12 pies)=1d.=2 cents U. S.

WEIGHTS AND MEASURES—Same as Great Britain. The maund (82  $\frac{2}{7}$  lb. avoirdupois) is also used.

*Law.*

Although no provision is made by statute for the registration of trade marks, it is the practice to register a declaration of ownership under the Indian Registration Act XVI of 1908. This, however, has no legal effect. The only effect is that it affords some evidence of proprietorship and user.

The law as to trade marks in India is the same as obtained in England prior to the passing of the Trade Marks Acts. The validity of a trade mark depends upon its long use in the country and it thereby acquires the protection afforded by the common law.

*Duration.*

Unlimited.

*Requirements and Mode of Application.*

Power of attorney; declaration of ownership; four facsimiles of the trade mark; electro or wood block, if advertisement is desired.

In addition to the registration of a declaration as above, it is usual and advisable, but not required by the provisions of the Indian Registration Act, to advertise proprietorship and user of the trade mark in the Calcutta Exchange Gazette or other paper.

Particular attention is directed to the necessity of both the power and the declaration being made by one and the same individual. When a member of a firm or an officer of a company makes a declaration in his own name for and on behalf of his firm or company, he must also personally execute the power of attorney. The declaration may be simply witnessed, but the power must be executed before and be attested by a Notary Public, Magistrate or British Consul, but *not* by a Commissioner for Oaths.

Should the signatures of executants or attesting officers be not perfectly clear and legible, it is important that the names be given us in the accompanying letter of advice. Also, if the attestation clause or other matter be in other than the English language, a translation of same should be made on a separate sheet accompanying the document.

(Form for application may be obtained from B. Singer's Offices.)

Four copies of the trade mark are required, and it is essential that all be exactly alike. In cases where the same device is used with differing distinguishing letters or numbers, the four labels supplied should all be of the one kind, and alike also in color.

#### *Assignments.*

For the purpose of recording assignments of trade marks, the following papers are required: Power of attorney; deed of assignment and four copies of the trade mark.

The requirements as to signatures, attestation and similarity of labels are the same as for original registrations.

Power of attorney must be executed by the person, firm or company making the assignment, and to be attested by a Notary Public, Magistrate or British Consul, but not by a Commissioner of Oaths. Should the signature of the attesting officer be not perfectly clear and legible, the name should be mentioned to us in the letter of advice.

#### *Infringements.*

Although infringement of trade marks is punishable under certain sections of the Indian Penal Code, and the importation of infringing trade marks is preventable under the Indian Merchandise Marks Act, there is no Act in India for their registration. The law under which declarations of ownership of trade marks are recorded in India is the Indian Registration Act which provides for the registration of all or any deeds relating to movable or immovable property.



*False Mark of Origin.*

Regulations of peculiar stringency regarding the marking of goods imported into India appear to be lately coming into force in that country. The Indian Merchandise Marks Act provides for the exclusion of any goods bearing a mark such as falsely to indicate that they were made within the United Kingdom or British India, unless there be joined to that mark an equally conspicuous indication of the country where the goods are actually made. It appears now to be held by the customs officials that any trade mark in the English language is a mark indicating British origin. That, therefore, any American-made goods bearing a mark in the English language must have added to the mark, for purposes of distinction, the words "Made in U. S. A.," or their equivalent. This rule, giving to the United Kingdom a monopoly in the English language on goods imported into India, if not new, has only lately been enforced. The American Consul at Bombay now reports that the importers of an American lock bearing the mark "Navy" were notified that hereafter the name must be accompanied by an indication of the country of origin. He also stated that notices relating to the importation of other articles have been brought to the attention of his office.

It appears that, in its main outline, the law is the same as the common law of Great Britain. The person who first uses the mark becomes thereby legally entitled to its use, unless under special circumstances. It is, however, customary to register trade marks under the Indian Registration Act in the same manner as deeds of real property are registered, for the purpose of affording proof of title to the mark, should the necessity arise of proving such title in the prosecution of infringements. It may also be noted that a trade mark may be registered with the Customs House in Calcutta for the purpose of preventing the importation into India of other goods bearing the same or a similar mark.

Under the Indian law protection is given to trade marks as a species of property right, the law recognizing the right of a trader to adopt and use a mark for the purpose of identifying his goods and to prevent others from using the same mark, or a mark so similar thereto as shall deceive purchasers into the belief that the goods which he is selling are the manufacture of another person. In case of proven infringement of a trade mark, the title to which can be satisfactorily established by the complainant, prosecution may be had in the criminal courts under the provisions of the Penal Code and the Indian Merchandise Marks Act as well as in the civil courts, by a suit for damages, an injunction and an accounting of profits. In the case of conviction in a criminal proceeding, a fine may be imposed, and imprisonment up to two years. In addition thereto, the court in either civil or criminal cases of trade mark infringement or counterfeiting,

may direct the forfeiture to His Majesty of all goods and things, by means of, or in relation to which, the offense has been committed, or, but for the conviction of the offender, would have been committed.

The Indian Merchandise Marks Act contains further provisions regarding the use of fraudulent marks upon merchandise, and is modelled after the English Merchandise Marks Act of 1887. It provides that the use of any trade description, untrue in a material respect, falsely stating for example the manufacturer of the goods, the number, quantity, measure or weight thereof, or the place or country where they were produced, or the mode of manufacture or production thereof, or the materials of which they are composed, unless it be shown to have been used without fraudulent intent, is punishable by imprisonment for a term not exceeding three months or by a fine not exceeding three hundred rupees.

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That the trade mark law of British India does not differ materially from that of Great Britain is shown in the report of a recent case in Bombay. The law enforced there is indeed the English common law and the decision is of interest only as it evidences that fact. The case was an ordinary suit in equity for the infringement of a trade mark upon white shirting, and the decree of the high courts of Bombay was, in effect, that the defendant should be restrained from importing, selling or exposing for sale in India any white shirting, gotten up in the manner, and with the numbers shown on the offending sample, or any shirting having upon it the number 44,000, with the letter "c" prefixed to it, in imitation of the plaintiff's number, or any buff heading or ticket, such as that complained of. The defendant was also ordered within one week to remove all the face plaits from the white shirting in the Bombay Customs House in the presence of the plaintiff's representative, and to destroy them when so removed. (Holland Bombay Trading Co., Ltd., vs. Janowitz, Times of India, Sept. 25, 1909.)

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## ITALY

The territory comprised in the Kingdom of Italy is about 110,000 English square miles. The population in 1911 was estimated at 34,565,198.

The government consists of a monarchy; the executive power is vested in the King and His Ministers. The Legislature consists of two chambers, the Upper House, or Senate, and the Lower House, or House of Deputies. The latter are elected every five years, or on a dissolution of the Ministry.

Italy is essentially an agricultural country and the agricultural

class forms the backbone of her population. The staple products are corn, wine, oil, raw silk and fruits. Hemp and flax are also largely grown and sulphur is also largely produced. Cotton was also at one time cultivated to some extent, but at the present time the industry is almost entirely abandoned.

Among the manufacturing industries of Italy silk holds the first place. Other principal industries are wine growing, the manufacture of cotton goods, olive oil and sugar, the breeding of cattle and also the rearing of poultry.

**MONEY**—The monetary unit of Italy is the lira=100 centimes =9 1/2d.=19 cents U. S.

**WEIGHTS AND MEASURES**—The metrical system has been adopted.

#### *Laws.*

August 30, 1868, and January 16, 1898. Regulations of February 7, 1869. Treaty of June 1, 1884.

#### *Duration.*

The term of protection of trade marks is forever.

#### *Who May Apply.*

Whoever adopts a mark or other sign to distinguish the products of his industry, the goods in which he trades or animals of a breed belonging to him shall have the exclusive use thereof, provided he files it as prescribed by the present law. (Art. 1.)

Individuals, associations and corporations may register their marks. Collective marks may also be registered.

Foreigners may register their lawful trade marks. Citizens or subjects of countries with which Italy has concluded treaties or conventions on the subject are entitled to priority, provided they make application for registration within a specified time after the application for registration in the country of origin.

#### *Conditions of the Validity of Trade Marks.*

The conditions of validity are that the trade mark must be different from those already legally used by others and that it must contain:

1. The name of the manufacturer or dealer;
2. The place where the goods come from;
3. The indication of the class of goods in respect of which the trade mark is to be used.

An exception to this rule is only made for small objects or for animals, in which cases the trade mark may simply consist of initials or other equivalent design. These requirements do not apply, however, to trade marks already registered in a foreign country which can be registered in Italy in the same form in which they have been registered abroad. In this way foreigners

have a great advantage over Italian subjects, because a foreigner can adopt in Italy any trade mark which he has registered in his own country, whilst Italian subjects are compelled to insert their name and address upon the trade mark, which is sometimes very objectionable.

The Italian trade mark law does not give any definition of what a trade mark must be, but Article 1 points out its purpose and the conditions for its validity.

#### *Requirements.*

Certified copy of home registration; four copies of the trade mark; power of attorney, signed by the applicant and legalized by an Italian Consul; a description of the goods to which the mark is to be applied and of the manner in which it is to be used. (Forms for application may be obtained from B. Singer's Offices.)

Trade marks are registered without preliminary examination, except so far as the formalities of the application are concerned.

#### *Fees.*

The registration fee is 40 lire.

#### *Assignments.*

Assignment of a trade mark must be recorded.

#### *Infringement and Fines.*

Owners of Italian trade marks, in order to obtain redress in case of infringement of the privileges of ownership in Italy, must have recourse to the Civil Tribunals of the kingdom in the place in which the forgery or appropriation of the trade mark occurred, or where the article to which the false mark was attached was used for purposes of trade. In such cases, according to the terms of the 11th Article of the same law, the Penal Code can be brought into action, and need not be limited to a private prosecution. The fines to be imposed, over and above the amount of loss suffered by the injured party, on those who forge and appropriate trade marks are fixed by the 12th Article of the same law.

It should be observed that the 5th Article of the law prohibits the illegal appropriation by any person of the name of a commercial firm, of the sign of the business of such firm, or of its characteristic mark, whether belonging to natives or to foreigners, even when such articles have no special distinctive sign or trade mark. Several sentences, however, of the Tribunals and Courts of Appeal, founded on the 7th and 10th Articles of the law of the 30th of August, 1868, have decided that the right to the exclusive use of a trade mark does not come into force till the date of the deposit at the Prefecture, and that, therefore, if

anyone uses a trade mark before it has been so deposited, he not only cannot be accused of forgery by any person who may have accidentally been the first to adopt it without having previously deposited it at the Prefecture, but he will be entitled to use it even after the deposit has been made.

A tradesman may not suppress the manufacturer's mark or distinctive sign on his goods without the manufacturer's express consent, but he may add his own trade mark or distinctive sign. (Art. 3.)

Marks or distinctive signs already lawfully used abroad upon products and goods of foreign manufacture and trade which are sold in Italy, or upon animals of foreign breed born in the Kingdom, are acknowledged and protected, provided that, in respect of such marks and signs, the provisions established for Italian marks and signs are complied with. (Art. 4.)

In addition to the prohibition of assuming the name or the signature of a company or individual, it is also forbidden to assume the commercial style, or the ensign of a special business, the characteristic emblem, the denomination or title of an association, or institution, either foreign or national, and use them for shops, articles of industry, or trade, or on drawings, engravings, or other works of art, even when such style, ensign, emblem, denomination or title do not form part of a trade mark or distinctive sign, or are not registered in accordance with this Act. (Art. 5.)

A fine which may amount to 2,000 lire, even if no damage has been caused to third parties, will be charged against:

1. Whoever forges a mark or distinctive sign, or uses such mark or sign knowing the same to be false.

2. Whoever consciously puts into circulation, sells, or imports from abroad, for trade purposes, goods bearing false trade marks or descriptive signs.

3. Whoever, without forging a mark or distinctive sign, imitates it fraudulently, or makes use consciously of a mark or sign fraudulently imitated.

4. Whoever consciously makes use of marks, signs, ensigns or emblems bearing indications apt to deceive customers as to the origin of the goods, or whoever sells goods with such marks, signs or emblems.

In case of re-occurrence of the offense the fine may be raised to 4,000 lire.

The forged trade mark or sign, the instruments used for forging the marks, as well as the goods to which the false marks have been applied, will be seized.

The forged marks, signs, ensigns or emblems shall be restored at the expense of the offender.

The above penalties are applicable without any prejudice as to the payment of damages to the parties who may have suf-

ferred in consequence of the offense and apart from such heavier penalties as are enacted by the Penal Code to punish forgery. (Art. 12.)

Whoever imports into the country, for trading purposes, sells or puts otherwise into circulation, works or industrial products of any kind, with forged or false names, marks or distinctive signs, or under names, marks or distinctive signs, apt to deceive the purchaser as to the origin or the quality of the work or of the product, is liable to imprisonment for a period varying from one month to two years, and to the payment of a fine which varies between 50 lire and 5,000 lire.

*Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

Under the laws in force the importation, sale and circulation of goods bearing false trade marks or false or forged marks or distinctive signs, or marks or distinctive signs which might deceive purchasers in regard to origin, are punishable offenses. A United States or other foreign merchant, having registered his trade mark in Italy, can bring a civil or criminal action against anyone who counterfeits his trade marks. A purchaser can take proceedings if he can prove that an article represented as of United States or British origin has been manufactured in Italy. No steps are taken by the Government to prevent the importation of goods bearing a false indication of origin, but as the customs regulations require, for purposes of duty, a correct declaration of the country of origin, there is some check on wholesale abuse. In some cases consular certificates are demanded in support of declaration of origin. There appear to be no requirements as to the marking of imported goods to denote their country of origin or that they are foreign.

Marking of Goods: "Marca Depositata."

*Foreign Trade Marks.*

Article 1 of the Italian trade mark law, adopted in the year 1868 and not since revised, requires that a trade mark "should indicate the place of origin, the factory and the maker in such way as to point out the name of the person or firm by whom, and the establishment from which, the goods are issued." The Court of Cassation at Turin holds that this does not require the use of the name in full. A mark which contains merely the initials of the firm, together with other distinctive symbols, satisfies every requirement of the law. Thus, the representation of the bust of a woman and the words "a la Princesse," together with the initials of the firm owning the mark, is a distinctive and valid trade mark within the meaning of the Italian law.

It was further held that a mark legally used abroad is valid in

Italy, even though it does not comply with all the requirements of the Italian law as to form. The right to the exclusive use of a trade mark arises in Italy in favor of a foreign firm from the date at which the owner can show adoption and use of the mark abroad, even though registration was not made in Italy (Bulletin, Vol. VI, 208).

Upon an application to cancel a foreign mark, by reason of its failure to comply with the provisions of Article 1 of the Italian law, it was shown that the mark had been adopted and used by the defendant abroad prior to the use thereof by the plaintiff. It was held that cancellation could not be decreed. (Mantovani & Co. vs. Rosenthal Fleischer & Co., *Bollettino della Prop. Intel.*, 1910, p. 487.)

#### *Protection of Trade Marks in Colonial Possessions.*

At the time the trade mark law of Italy was enacted the African colonies were not in existence. The Minister of the proper department having been questioned upon the subject, has given it as his opinion that the colonies were, nevertheless, included in the protection to be derived from registration, but the matter has never, so far as we are informed, been judicially decided. Under date of December 5, 1907, however, a decree governing trade marks and unfair competition was promulgated for Eritrea, Abyssinia. By the terms of this decree any trader or manufacturer domiciled in the colonies, or whose marks have previously obtained protection in Italy, may register his mark for the purpose of protection in that colony. The wrongful appropriation or imitation of the names of persons or companies, or of the signs displayed on business houses, is likewise forbidden, as is also imitation of the form or color or general appearance of an article of merchandise in such manner as to cause confusion of the imitative product with the original. Violation of the law is punished by fine, up to 2,000 lire, without prejudice to the right to recover damages in a civil action.

The counterfeit or imitative marks are confiscated. Regulations for putting this decree into effect were adopted under date of March 5, 1908. (*Bollettino della Proprieta Intellettuale*, 1908, pp. 295, 356.)

#### *Construction of the International Convention.*

A novel point of international law, affecting trade mark rights, was raised before the criminal court of Naples, Italy, in a prosecution for trade mark infringement. It would appear, from the report of this case, that the defendant was being prosecuted for infringement of a trade mark that had not been directly registered in Italy, but registered there only by the International Bureau at Berne, Switzerland, after registration in some other

country of the International Union. It will be recalled that the arrangement for the international registration of marks between the countries to this arrangement is as follows: The mark, having first been registered in one of the countries of the Union by a citizen thereof, notice of this registration is transmitted to the International Bureau at Berne, Switzerland, and by this bureau transmitted to the other countries of the Union and there recorded. The mark upon which the prosecution was based appears to have been recorded in Italy in this manner.

The defendant claimed that this arrangement for the international registration of trade marks effected at Madrid in 1891 was in contravention of the convention of Paris of 1883 and of the Italian trade mark law made in accordance therewith. The convention of Paris secures to foreign citizens of one of the contracting parties in Italy the same rights as Italian citizens, upon the condition that they comply with the requirements imposed upon the latter, but in the case of citizens it is necessary, in order to sustain an action for infringement, that the mark be registered in Italy in accordance with certain formalities prescribed by the law. The defendant maintained that the record of registration in the International Bureau at Berne transmitted to the Italian Government was not such a compliance with the terms of the convention of 1883 and of the Italian law as would enable the complainant to maintain the action. The court, however, held that the arrangement of 1883 was subject to modification by the parties thereto, provided such modification did not diminish the protection accorded by that convention and that the later arrangement for the international registration of trade marks, in facilitating the registration of marks by foreigners, was such a modification as merely enlarged the protection afforded to them by the original convention, and, insofar, abrogated the previous requirements as to the formalities that must be complied with by foreigners for the registration and consequent protection of their marks in any of the countries of the Union. (*Bouty vs. Vittozzo Cyrus, etc., La. Prop. Ind., 1907, p. 11.*)

#### *Unfair Competition.*

By a decision of the Court of Appeals of Perugia, Messrs. Scott & Bowne were lately upheld in the right to the use of the trade name "Scott" in connection with an emulsion of cod liver oil. It appeared that one Trasciatti, an Italian, placed upon the market a preparation similar to the American article which he designated as "Emulsion tipo Scott," or "Emulsion of the Scott type." While conceding the right of the defendant to make an emulsion exactly identical in composition with the American product if he chose to do so, so long as he sold it without trading upon the name of the former, the court said that he had no right to identify his product with that of the American firm in



this way. Such use of the name Scott was for the evident purpose of profiting by the reputation which the name had acquired in connection with this remedy. If the defendant had wished to identify his product by its composition, he could, in the view of the court, easily have done so by description, as by the words "An emulsion of cod liver oil with hypophosphites of lime and soda" without making use of the name Scott in that connection. The court said further:

"The right of free competition should not be confused with the injury of another. It is lawful and even commendable and for the public interest, that by the use of every honest means a trader should increase his business. It is lawful for him to invade the field of another by assimilating his products to others of the same sort, the reputation of which he should not be allowed to enjoy."

This case is remarkable in that, in the protection it affords, it goes quite beyond the doctrine of unfair competition as administered in the United States. The product was plainly differentiated from that of the American firm, by the manner in which it was designated, so that it could hardly have been purchased by any one in the belief that he was getting the American product, but only in the belief that he was getting something made in imitation of it and in composition the same, which was indeed the fact. (Scott & Bowne vs. Trasciatti, *Bollettino della Proprieta Intellettuale*, 1906 p. 7.)

#### *Penal Liability for Infringement.*

The owners of two American proprietary remedies, the "Dr. Williams Pink Pills," and the "Santal Midy Capsules," have been so fortunate within the last year as to secure in Italy a valuable judgment in criminal proceedings against an infringer, for the sale of preparations made in counterfeit of their own. The defendant was charged with having made divers sale of these counterfeits, but defended upon the ground that he had bought the medicines in good faith, believing them to be genuine, and had sold them in the same belief. His somewhat contradictory explanations, however, regarding the goods and the statements made by him to those to whom he had sold and attempted to sell the goods, seemed to the court abundantly to establish his bad faith. The criminal court at first instance accordingly sentenced him to imprisonment for two months in close confinement, to the payment of a fine of 100 francs and to the payment of such damages as might, under separate inquiry, be found to have been sustained by the proprietors of the preparations in question. The counterfeit goods seized in his place of business were ordered to be destroyed. The court, however, suspended sentence in view of the previous good reputation of the defendant.

From this sentence the defendant appealed to the Court of Appeals of Rome, which court found the judgment of the court below to be abundantly sustained, and the sentence inflicted to be indeed moderate, to say the least, in view of the flagrancy of the offense and the latitude allowed to the court in such cases by the Penal Code. (La Prop. Ind., 1910, p. 99.)

### *Unfair Competition.*

Under date of December 7, 1905, the Court of Cassation of Turin, Italy, rendered a decision touching the right of the owner of a pharmacy in the city of Genoa to protection against the use by another of the like designation for a similar business in the same city. The business of the plaintiff was denominated the "International Pharmacy." The defendant opened a drug store in another part of the city under the same name, whereupon the plaintiff brought suit to enjoin his use of the designation. The plaintiff was successful in the court of first instance, and this decision was confirmed on appeal.

On behalf of the defendant it was argued first, that the term was in common use, and therefore not a good trade mark; second, that it was descriptive, having reference to the business conducted there, implying that it was a pharmacy where various languages were spoken and foreign medicines were sold; third, that it was not originally adopted by the plaintiff as a distinctive but as a descriptive designation, and therefore should not be protected; fourth, that the plaintiff's trade was necessarily merely local, and the "sphere of influence" of the sign was limited, that accordingly there was no competition between the two houses. Each of these several contentions was, however, overruled.

As to the first, it was shown that the word "International" was used in Genoa in connection with divers other sorts of business, e. g., that of a bakery and liquor store, and that the term "International Pharmacy" was in use in Milan and in Rome. It was held, however, that these facts did not effect the rights of the parties, the plaintiff having first in the city of Genoa, adopted the word as a designation for a pharmacy.

On the second point, it was held that the word was not descriptive, in the accepted meaning of that term as applied to marks, but was sufficiently arbitrary and fantastic as applied to a pharmacy, granting that it conveyed the meaning contended by the defense, to be entitled to protection.

The third argument, based upon the intent of the plaintiff in adopting the word, was held to be irrelevant, the only question before the court being as to the character of the word. This being entitled to protection, any inquiry into the intent of the plaintiff in adopting it was superfluous and inadmissible.

Passing upon the last point, the court held that within the limits of a single city it would not inquire into the territorial extent of

the trade which each drug store might enjoy, but where the question was one of unfair competition, it would suppress the use of the means by which this competition was carried on.

The defendant was enjoined from the use of the word "International" in the name of his pharmacy. (*Piccone vs. Moscatelli, La Legge., etc., d'Italia, 1906, p. 434.*)

Unfair competition involves two elements, the fraudulent intent and a means or combination of means adapted to carry it out. The question of whether the means adapted are calculated to cause confusion and thereby to make the competition unfair, is to be determined with reference to the character of the consumers of the goods, to the place where the goods are sold, and to the usual and ordinary attention which purchasers give in the purchase thereof.

The use of proper names with fraudulent intent is a means of unfair competition, when adopted with the intent to appropriate the trade of another. In the case of goods commonly intended for the great mass of the public and which usually do not require examination in their purchase, it is enough that the proper name should constitute the principal-designation of the goods, that by which it is commonly called and introduced to purchasers, and that the accompanying differences be slight and inconspicuous. So in the sale of the article known under the name "Fernet Branca," what attracts the attention of consumers is the designation "Fernet Fratelli Branca" and all accessories pass unobserved and are not sufficient to distinguish two products of the same name.

By reason of the foregoing considerations, the Judicial Court of Naples required the firm Fratelli Branca Fu Carlos e C. to change its firm name and trade marks, as well as to pay damages and costs of the action. (*Fratelli Branca c. Fratelli Branca Fu Carlos e C., Patentes y Marcas, 1906, p. 11.*)

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## JAMAICA

Jamaica is the largest of the British West India Islands, being 144 miles in length and 49 miles in extreme breadth and containing an area of about 4,207 square miles. About 800,000 acres are under cultivation. The climate is extremely healthful. The population in 1911 was estimated at 861,000.

The following are the principal imports: Foodstuffs, liquors, tobacco and cigars, furniture, clothing, hardware and ironmongery, building machinery, estates' machinery and stores, machinery, coal, coke, etc.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Laws.*

No. 37 of May 23, 1911.

*Duration.*

The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this law. (Art. 29.)

The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration." (Art. 30.)

*What May be Registered.*

A registrable trade mark must contain or consist of at least one of the following essential particulars:

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs 1, 2, 3, and 4, shall not, except by order of the Court, be deemed a distinctive mark:

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the first day of April, 1889, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this law.

For the purpose of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted the tribunal may, in the case of a trade mark, in actual use, take into consideration the extent to which such user has rendered such trade mark

in fact distinctive for the goods with respect to which it is registered or proposed to be registered. (Art. 9.)

The proprietor of any trade mark registered or deemed to be registered in England under the "Trade Marks Act, 1905" (Imperial Act 5 Edward 7, c. 15) may, if such trade mark is not already registered or deemed to be registered under this law in respect of the same goods or description of goods belonging to some other person, apply to have such trade mark registered under this law, on lodging with the Registrar a copy purporting to be duly certified and to be sealed with the Seal of the Patent Office of the entry in the register kept under the said Act relating to such trade mark, including a copy of the mark and disclaimers, if any. It shall not be necessary to advertise any such application and the Registrar may subject to an appeal to the Court refuse any such application.

If such trade mark is already registered under this law in respect of the same goods or description of goods in the name of some person other than the applicant, the Registrar shall inform such applicant of the name and address of the person registered as aforesaid. (Art. 19.)

#### *Not Registrable.*

It shall not be lawful to register as a trade mark or a part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design. (Art. 11.)

#### *Mode of Application and Procedure.*

(1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this law the Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(4) An appeal under this section shall be made in the prescribed manner and on such appeal the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments or modifications, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving

at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the Court. Where any further grounds of objections are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error, in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit. (Art. 12.)

When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted. (Art. 13.)

Any person may within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration. (Art. 14.)

#### *Requirements.*

Power of attorney; where a trade mark is registered in Great Britain a certified copy of the British registration; three facsimiles of the mark and one electrotype. (Form for application may be obtained from B. Singer's Offices.)

#### *Associated Trade Marks.*

If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as condition of registration that such trade marks shall be entered on the register as associated trade marks. (Art. 25.)

#### *Assignment.*

A trade mark when registered shall be assigned and transmitted only in connection with the good will of the business concerned in the goods for which it has been registered and shall be determinable with that good will. (Art. 23.)

Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this law user of a registered trade mark is required to be proved for any

purpose, the tribunal may if and so far as it shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user. (Art. 28.)

#### *Offenses and Penalties.*

If any person makes or causes to be made a false entry in the register kept under this law, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any term not exceeding two years with or without hard labor. (Art. 61.)

(1) Any person who represents a trade mark as registered which is not so, shall be liable for every offense on summary conviction before a Resident Magistrate or two Justices of the Peace to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labor for any term not exceeding two months.

(2) Any person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered" or any words expressing or implying that registration has been obtained for the trade mark. (Art. 62.)

#### *Classification.*

Same as British.

#### *Registration to be Prima Facie Evidence of Validity.*

In all legal proceedings relating to a registered trade mark (including applications under Section 36 of this law) the fact that a person is registered as proprietor of such trade mark shall be prima facie evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same. (Art. 41.)

#### *Registration to be Conclusive After Seven Years.*

In all legal proceedings relating to a registered trade mark (including applications under Section 36 of this law) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this law, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of Section 11 of this law.

Provided that nothing in this law shall entitle the proprietor of a registered trade mark to interfere with or restrain the user

by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of Section 22 of this law. (Art. 42.)

#### *Unregistered Trade Mark.*

No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the first of April, 1889, and has been refused registration under this law or any law repealed by this law. The Registrar may, on request, grant a certificate that such registration has been refused. (Art. 43.)

#### *"Passing Off" Action.*

Nothing in this law contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or remedies in respect thereof. (Art. 46.)

### LEGAL PROCEEDINGS.

#### *Certificate of Validity.*

In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favor of the proprietor of such trade mark, the Court may certify the same, and it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favor shall have his full costs, charges and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same. (Art. 47.)

#### *Registrar to Have Notice of Proceeding for Rectification.*

In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter



in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding. (Art. 48.)

#### *Costs.*

In all proceedings before the Court under this law the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties. (Art. 49.)

#### EVIDENCE.

##### *Mode of Giving Evidence.*

In any proceeding under this law before the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which the Registrar shall think it right so to do, he may (with the consent of the parties) take evidence viva voce in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken viva voce the Registrar shall have power to require the attendance of witnesses and the production of documents and to take evidence on oath, and shall for the purposes of any proceeding under this law before him have all the powers possessed by the Registrar of the Supreme Court in relation to proceedings in the Supreme Court, and the Court shall have power to enforce the orders of the Registrar as if they were those of a Judge. (Art. 50.)

##### *Sealed Copies to be Evidence.*

Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar and sealed with the seal of the General Register Office, shall be admitted in evidence in all Courts in this Island and in all proceedings, without further proof or production of the originals. (Art. 51.)

##### *Certificate of Registrar to be Evidence.*

A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing which he is authorized by this law, or rules made thereunder, to make or do, shall be prima facie evidence of the entry having been made, and of the con-

tents thereof, and of the matter or thing having been done or not done. (Art. 52.)

POWERS AND DUTIES OF REGISTRAR OF TRADE MARKS.

*Exercise of Discretionary Power by Registrar.*

Where any discretionary or other power is given to the Registrar by this law or rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard. (Art. 53.)

*Appeal from Registrar.*

Except where expressly given by the provisions of this law or rules made thereunder there shall be no appeal from a decision of the Registrar, but the Court in dealing with any question of the rectification of the register (including all applications under the provisions of section 36 of this law) shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made. (Art. 54.)

Where by this law any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this law or in particular cases by special leave of the Court be done by or to an agent of such party duly authorized in the prescribed manner. (Art. 55.)

*Registrar May Take Direction of Law Officer.*

The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this law, apply to His Majesty's Attorney-General for Jamaica for directions in this matter. (Art. 56.)

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## JAPAN

Japan consists of five large islands, viz: Honshiu (the Japanese mainland), Shikoku, Kiushiu, Hokkaido (Yezo) and Formosa, together with several smaller groups of islands. It has an area, including the small islands, of 161,208 square miles with an estimated population in 1911, including Korea, of 65,000,000. Formosa has an area of 13,458 square miles and an estimated population of 3,200,000. By the treaty of peace signed on Sept. 5, 1905, Russia ceded to Japan the lease of Port Arthur, Ta Lien, etc., and also half of the island of Saghalien (area

about 30,000 square miles, with an estimated population of 29,800).

Japan is a constitutional empire and the Emperor exercises the supreme executive and legislative powers with the assistance of his Ministers appointed by himself. The Legislature consists of a House of Peers and a House of Representatives.

The chief agricultural products of Japan are wheat, rice, silk, tea, tobacco, wax, cotton and vegetables.

The mineral products consist of gold, silver, copper, lead and iron, also coal; of the latter over 10,000,000 tons are annually produced. Other mineral products found are antimony, manganese, cobalt and oxide of iron; and of non-metallic substances, petroleum, sulphur, kaolin, asphalt, marble.

Among the principal manufactures of Japan may be mentioned saké, a fermented beverage extracted from rice, and also the camphor industry (a Government monopoly), the cotton spinning mills, the silk spinning mills, cement works, glass works, rope factories and match factories. The principal imports are woolen and cotton tissues, petroleum, iron and steel machinery, etc.

**MONEY**—The yen is the legal monetary unit in Japan, value about 2s. 0½d.=49 cents U. S.

**WEIGHTS**—The kin is equal to the catty, or 600 grammes of the metric system of weights, or 1.32277 pounds English avoirdupois weight. The pound and ton are English avoirdupois weights.

**MEASURES**—The square foot and the square yard are the English surface measure and are respectively equal to 0.0929 and 0.8361 of a square metre.

The cubic foot is the English cubic measure, and is equal to 0.0282 of a cubic metre.

The gallon is the standard wine measure of the United States of America.

The litre and hectolitre are the measures of capacity of the metric system.

#### *Law.*

Law No. 25 of April 2, 1909.

#### *Term.*

The period of duration of a trade mark right is twenty years. The period may be renewed.

A trade mark for which registration is obtained as a registered trade mark of a foreign country expires with the trade mark right in the original country. However, the period of duration of such trade mark may not exceed twenty years. (Art. 7.)

*Who May Apply.*

A person who intends to have the exclusive use of a trade mark in order to indicate that goods are produced, manufactured, worked up, selected, certified, handled or sold by him as a business, may obtain registration of such trade mark under this law. (Art. 1.)

*What May Be Registered.*

A trade mark for which registration may be obtained must consist of letters, devices or signs, or their combinations, and must be distinctive and conspicuous.

A trade mark may be registered with a designation of the colors to be used thereon.

*What May Not Be Registered.*

In the case of the following trade marks registration is not granted:

1. One containing a device identical with, or similar to, the Imperial Chrysanthemum Crest.

2. One identical with, or similar to, the national flag, the army or navy ensign, a decoration, a medal of merit or a badge, or the national flag of a foreign country.

3. One liable to disturb public order or morals, or to deceive the public.

4. One identical with, or similar to, a mark commonly used on the same kind of goods.

5. One identical with, or similar to, a mark known to the public to belong to another person and to be used on the same kind of goods.

6. One identical with, or similar to, the device of the Red Cross on a white ground or the name of, or characters for, Red Cross or Geneva Cross.

7. One containing a device identical with, or similar to, a prize medal, a diploma of honor, or a certificate of merit, of an exposition or competitive exhibition held by the government or "Do," "Fu" or "Ken," or by those who have received the permission of the government, or of an exposition held in a foreign country by the government thereof, or an international exposition held in a foreign country with the permission of the government thereof. However, when a person who has obtained such a prize medal, diploma of honor, or certificate of merit desires to use it as a part of his trade mark, this provision is not applicable.

8. One containing a likeness, the personal name, or the firm name, of another person, or the title of a juridical person or

partnership. However, a person who has obtained permission therefor is not subject to this provision.

9. One identical with, or similar to, a trade mark of another person in the case of which one year has not elapsed since the loss of validity of the registration thereof. However, in cases where it has remained unused for more than one year previous to the loss of validity of the registration thereof, this provision is not applicable. (Art. 2.)

#### *Mode of Application.*

An application must be accompanied by power of attorney, a certificate of nationality and a specimen of the trade mark, also the filing fee.

The applicant must definitely specify the goods to which the trade mark is to be applied or used.

The application shall be made separately for each class of goods on which the trade mark is to be used, according to the annexed official classification.

If the applicant desires to obtain registration of a trade mark limiting the colors to be used thereon, he must designate the colors in the application and must file a colored specimen.

If an applicant desires to obtain registration as an associate trade mark of a trade mark, which is similar to a registered trade mark, he must file the registration certificate of such registered trade mark, in which it is necessary that the registration number of such associate trade mark be entered by the Patent Office.

A person who desires to obtain the registration of a trade mark in the Empire as a foreign registered mark shall attach to the application the registration certificate of the original country and any other document sufficient to prove the trade mark registered in the original country and the date of registration thereof.

With reference to trade marks which have been registered in the Empire as foreign registered trade marks, a person who desires to apply for the registration of renewal of the period of duration of his trade mark right in the Empire, after an application for registration of renewal of the period of duration of such trade mark right has been granted in the original country, shall attach to the application document sufficient to prove that the application has been granted in the original country. (Art. 11.)

The Director of the Patent Office may, if he deem it necessary, order an applicant for the registration of a trade mark to present a written explanation regarding such trade mark. (Art. 12.)

A person who desires to obtain registration of renewal of the period of duration of a trade mark right, shall present to the Patent Office an application accompanied by the registration certificate three months before the date of expiration of such period.

Even after the limit of time mentioned in the preceding para-

graph, the application mentioned in the preceding paragraph may be presented on the payment of a fee specially prescribed, provided that it is before the expiration of the period of duration of the trade mark right. (Art. 14.)

When a decision or judgment has been rendered to the effect that a trade mark should be registered, the applicant or the person making the request shall pay the trade mark fee within sixty days from the date of receipt of delivery of the written decision or judgment, and shall present to the Patent Office a block for printing the trade mark. (Art. 15.)

Registration certificates shall be made out in accordance with Forms 4 to 18, inclusive, and the Director of the Patent Office shall sign his name and impress his seal thereon.

The registration certificate shall have a specimen of the trade mark pasted thereon. (Art. 18.)

#### *Documents Required.*

For making an application for the registration of a trade mark, the following documents, etc., complete in every way, must be filed.

Power of attorney (see Form No. 17, B. Singer's Book of Forms); certificate of nationality; ten specimens of the trade mark; four blocks.

As soon as the application is granted a block for printing the trade mark must be sent to the Patent Office and it is therefore advisable to send the same with the documents. The block may be made of wood, zinc, copper or any other material adapted for type-printing and must not exceed 3-15/16 inches in length and breadth, and, in case of a trade mark consisting of characters or letters, must not exceed 2 9/16 inches in length and breadth. The thickness of these blocks must not exceed 15/16 inch; they must be made in one piece and must also be right-angled quadrilateral with the entire figure of the trade mark engraved on its surface.

If it is desired to make application under the rules of the International Union for the Protection of Industrial Property, or, if an applicant desires it to be known that his trade mark is already registered in his own country, though after the period of four months in Convention has elapsed, a copy of original application or a copy of registration certificate, or an official trade mark Gazette, certified by the Government of the country where the original application was made, must be filed; and these papers must contain the dates of original application and of the registration.

When registration for a trade mark which is complicated has been applied for, a description giving an exact explanation of such trade mark with reference to the specimen must be sent.

In case of absolute necessity the Director of the Patent Office may order the applicant to send in a model or specimen of the specified articles on which his trade mark is used; such of the models or specimens deposited as the Director of the Patent Office may not deem it necessary to retain may, if so desired, be returned to the applicant.

### *Assignments.*

In case the right to a trade mark under application for registration or to a registered trade mark, has been affected either by sale or gift or succession or agreement of joint ownership, or by any other similar cause, the registration or alteration of the name of applicant or registrant must be applied for by both parties (assignee and assignor) within one year (excepting in case of inheritance).

The right to a trade mark may be transferred only in case the right is transferred together with the business; in such case, the right may be transferred by division according to the goods on which the mark is used.

The right of associated trade marks may not be transferred separately by division.

Documents required: Power of attorney signed by assignor; power of attorney signed by assignee; certificate of nationality of assignee; assignment (stating the condition under which the assignment is made, or a document sufficient to prove that the applicant is the successor); registration certificate (if registered trade mark).

### *Proceedings.*

An interested party or parties may demand a trial before the Patent Office with reference to the following matters:

1. To annul the trade mark which has been registered unlawfully, namely, that which falls under the rules of clause "Invalidation of registration of trade mark."

However, in case where a registered trade mark has contravened the rules of clause "Trade marks which cannot be registered," the demand for trial may not be made when three years have elapsed from the date on which the trade mark was published in the Official Trade Mark Journal.

2. For the determination of the limits of a trade mark right in cases where two or more registered trade marks are found to be in conflict with one another, or registered trade marks are found to be in conflict with the trade marks which are not registered.

Any person who is not satisfied with the decision in trial or with the decision on re-examination may within sixty days from

the receipt of the written statement of the decision demand a trial on appeal before the Patent Office.

Any person who is not satisfied with a judgment given in trial on appeal, by the Patent Office, may bring an action in the Supreme Court within sixty days from the date when the written judgment reaches him, only in case where the reason is that the judgment has contravened laws. However, with reference to a judgment regarding a decision on re-examination, this rule is not applicable.

#### *Penalty.*

A person coming under one of the following items is liable to penal servitude not exceeding five years or a fine not exceeding one thousand yen:

1. A person who has used a registered trade mark belonging to another person, or containers, wrappers, et cetera, bearing it, on identical goods; or a person who delivers or sells such goods, or has them in possession for the purpose of delivery or sale.

2. A person who delivers or sells a registered trade mark belonging to another person, or containers, wrappers, et cetera, bearing it, with the object of causing them to be used on identical goods; or a person who has them in possession for the purpose of delivery or sale.

3. A person who has counterfeited or imitated a trade mark belonging to another person with the object of using it, or causing it to be used, on identical goods.

4. A person who has delivered or sold a counterfeited or imitated trade mark with the object of causing it to be used on identical goods, or has used it on identical goods.

5. A person who delivers or sells identical goods on which a counterfeited or imitated trade mark is used; or a person who has them in possession with the object of delivery or sale.

6. A person who has imported, with the object of delivery or sale, goods on which a trade mark identical with, or similar to, a registered trade mark belonging to another person is used; or a person who delivers or sells such goods, or has them in possession with the object of delivery or sale.

7. A person who manufactures, delivers, sells, or has in possession, necessary implements for the purpose of counterfeiting or imitating a registered trade mark belonging to another person.

8. A person who, with reference to identical goods, has employed in an advertisement, a sign board, a hand bill, a catalogue, or any other mercantile papers used in his business, a trade mark identical with, or similar to, a registered trade mark belonging to another person.

The offenses mentioned in the preceding paragraph are tried upon complaint of the injured parties. (Art. 23.)

A person coming under one of the following items is liable



to penal servitude not exceeding three years, or a fine not exceeding three hundred yen:

1. A person who has obtained registration of a trade mark by a fraudulent act.

2. A person who has employed on an unregistered trade mark an indication of registration or an indication liable to be confused therewith, and has used it on goods; or a person who delivers or sells such goods, or has them in possession with the object of delivery or sale.

3. A person who, without obtaining registration, has used in an advertisement, signboard, handbill, et cetera, a trade mark containing an indication of registration or an indication liable to be confused therewith. (Art. 24.)

FEES.

*Imperial Ordinance No. 303 of Oct. 23, 1909.*

Application for the registration of a trade mark or mark, for each instance.....	Yen 3.00
Notification of a change in the name of an applicant for registration of a trade mark or mark, for each instance .....	Yen 1.50
Request for duplicate of a trade mark or mark registration certificate, for each instance.....	Yen 1.50
Application for registration of renewal of the period of duration of a trade mark or mark right, for each instance .....	Yen 2.00
Request for cancellation of registration of a trade mark or mark, for each instance.....	Yen 5.00
Request for prolongation of a prescribed period, for each instance.....	Yen .50
Request for avoiding the result of negligence of a prescribed or designated period, for each instance...	Yen 1.00
Request for certificates, for each instance.....	Yen .50
Request for copies of documents, Yen .10 for one leaf copy; in the case of foreign documents, Yen .10 for every 100 words and fraction thereof. However, when there are drawings in documents, a fee is charged with regard to the drawings in accordance with the provisions for preparation of drawings.	
Request for preparation of drawings from Yen .30 to Yen 30.00 one piece.	
Request for inspection of documents, for each instance .....	Yen .10
Request for copying documents, for each instance, Yen .25 for every hour and fraction thereof,	

Request for re-examination, for each instance.....	Yen 3.00
Request for trial or trial on appeal, for each instance..	Yen 12.00
Request for intervention, for each instance.....	Yen 3.00
Request for determination of amount of costs, for each instance .....	Yen 1.00
Request for authentic instruments with the power of execution of determination of costs or of final judgment with reference to the amount of compensation, for each instance.....	Yen 1.00

*Laws in Force to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

There are no laws prohibiting false indications of origin unless they involve the infringement of a registered trade mark. A trade mark bearing a false indication of origin cannot be registered. If the false indication is added after registration the registration may be cancelled. There are no Regulations prohibiting the importation of goods bearing a false indication of origin; but, under the Customs Regulations, in order to obtain an importation permit, a statement is required including information as to place of production or manufacture. There seems, however, to be no definite penalty for inaccurate statements as to places of origin. There are no Regulations requiring the marking of imported goods to show the country or place of origin or to denote that they are foreign.

Marking Goods: "Registered Trade Mark," written in English and Japanese.

An applicant shall designate the goods on which his trade mark is to be used according to the following classification:

CLASS 1.—Chemicals, Medicines and Articles Accessory to Medical Treatment,—Acids, salts, alkalies, bleaching powder, resin, glue, phosphorus, alcohol, glycerine, quinine, morphine, tinctures, syrups, decoctions, liquid medicines, infusions, pills, plasters, powders, tablets, electuaries, raw drugs, medicinal oils, essences of perfumes, lime, sulphur, mineral waters, musk, skin powder, table salt, muxa, antiseptics, deodorizers, insecticides, bandages, gauze, lint, absorbent cotton, sponges, oblates, etc.

CLASS 2.—Dyes, Pigments, Mordants and Preparations for Lacquering and Varnishing,—Indigo balls, indigo, purple roots, *beni*, vermillion, minium, mineral green, ultamarine, Prussian blue, white lead, chalk, gold and silver dust, gamboge, tooth dyes, green vitriol, alum, lacquer, varnish, paints, *shibu*, shoe-black, leather oils, anticorrosives, water-proof preparations, etc.

CLASS 3.—Perfumes, Incense and those Toilet Articles which do not belong to any other class,—Perfumed waters, perfumed oils, face-powders, hair-ointments, scent-bags, incense-sticks, incenses, face-lotions, etc.

CLASS 4.—Soaps.

CLASS 5.—Washing and Polishing Preparations which do not belong to any other class,—Washing-powder, tooth-powder, washing-liquid, polishing liquid, etc.

CLASS 6.—Metals and Half-worked Metals which do not belong to any other class,—Pig iron, wrought iron, steel, bar iron, tin plates, rails, sheet iron, iron wire, copper, sheet copper, copper wire, lead, sheet lead, zinc, sheet zinc, tin, aluminium, nickel, mercury, alloys, etc.

CLASS 7.—Manufactured Metal Goods which do not belong to any other class,—castings, forgings, engravings, net-works, etc.

CLASS 8.—Edged Tools and Sharp Pointed Tools,—Sickles, saws, chisels, drills, cold chisels, hatchets, axes, knives, razors, kitchen knives, planes, files, needles, nails, fire-hooks, etc.

CLASS 9.—Precious Metals, their Imitations, Aluminum Gold, Nickel Silver, Britannia Metal, as well as their Manufactures and Engravings which do not belong to any other class,—Gold, silver, *shibuichi*, *shido*, other alloys of precious metals, plated goods, gold and silver laces, etc.

CLASS 10.—Precious Stones, their Imitations, as well as their Manufactures and Engravings which do not belong to any other class,—Diamonds, corals, pearls, agates, quartz, topaz, emerald, etc.

CLASS 11.—Minerals.

CLASS 12.—Stones, their Imitations, as well as their Manufactures which do not belong to any other class.

CLASS 13.—Mortar and Sand,—Mortar, cement, gypsum, asphalt, sand, volcanic ashes, etc.

CLASS 14.—Glazed Earthen Ware, Porcelain, Cloisonné Ware, Unglazed Earthen Ware, Tiles and Bricks which do not belong to any other class.

CLASS 15.—Glass and those Glass Wares and Enameled Goods which do not belong to any other class,—Glass panes, glass tubes, glass bottles, glass balls, etc.

CLASS 16.—India Rubber and those Manufactures of the same which do not belong to any other class.

CLASS 17.—Machinery, Implements and the Parts thereof, which do not belong to any other class,—Boilers, steam engines, electric generators, electric motors, electric transformers, weaving machines, spinning jennies, sewing machines, printing machines, water raising machines, fire extinguishers, diving apparatuses, belting, etc.

CLASS 18.—Scientific, Medical, Measuring, Photographic and Educational Instruments and Tools, Phonographs, Spectacles, Calculating Instruments, and Parts thereof,—Telegraphic instruments, telephone instruments, electric switches, electric batteries, test tubes, surgical instruments, measuring and weighing

instruments, films, drawing instruments, gymnastic appliances, telescopes, microscopes, insulated wires, insulators, carbon for electric instruments, etc.

CLASS 19.—Agricultural and Industrial Tools and Instruments,—Ploughs, spades, hoes, *inakoki*, winnowing fans, harrows, pick-axes, etc.

CLASS 20.—Carrying Machines and Tools and Parts thereof,—Wagons, carriages, *jinrikisha*, automobiles, bicycles, perambulators, ships, railway cars, wheels, tyres, etc.

CLASS 21.—Time Pieces and Accessory Articles, and Parts thereof.

CLASS 22.—Musical Instruments.

CLASS 23.—Guns, Shot and Explosives,—Guns, rifles, fowling pieces, pistols, gun powder, gun cotton, dynamite, percussion caps, fire-works, torpedoes and mines, etc.

CLASS 24.—Eggs of Silk-worms, Eggs of Wild Silk-worms, and Cocoons.

CLASS 25.—Floss Silk, Cotton, Hemp, Jute, Feathers, and Rough Manufactures thereof.

CLASS 26.—Raw Silk, Silk Thread, Wild Silk Thread, *Koto* Strings, Gold Thread and Silver Thread.

CLASS 27.—Cotton Yarn.

CLASS 28.—Woolen Yarn.

CLASS 29.—Hemp Yarn and Thread which do not belong to Classes 26 to 28, inclusive.

CLASS 30.—Silk Cloths.

CLASS 31.—Cotton Cloths.

CLASS 32.—Woolen Cloths.

CLASS 33.—Hemp Cloths.

CLASS 34.—Textiles which do not belong to Classes 30 to 33, inclusive.

CLASS 35.—Knitworks, Braids, Twists, Laces, Ribbons, etc., which do not belong to any other class; Embroidery and Various Braided Cords which do not belong to any other class.

CLASS 36.—Clothing, Handkerchiefs, Buttons, Ornamental Pins, etc.,—Clothes, *kammuri*, hats and caps, collars, cuffs, neckties, *eri*, under-shirts, underdrawers, gloves, *tabi*, handkerchiefs, *tenugui*, towels, *fukusa*, *furoshiki*, etc.

CLASS 37.—Beddings and other Room Furnishings which do not belong to any other class,—Bedsteads, quilts, pillows, mosquito nets, cushions, screens, *gaku*, table cloths, curtains, floor coverings, etc.

CLASS 38.—*Sake*.

CLASS 39.—Various Liquors which do not belong to any other class,—Wine, beer, brandy, vermouth, whisky, *mirin*, *shirozake*, *shochu*, *nigorisake*, *kamenotoshi*, *naoshi*, etc.

CLASS 40.—Ice and Refreshing Beverages,—Soda-water, orange syrup, lemonade, cider, etc.

CLASS 41.—Soy, Sauces and Vinegar.

CLASS 42.—Sugar and Honey,—White sugar, brown sugar, crystallized sugar, rock candy, molasses, honey, etc.

CLASS 43.—Confectionery and Bread,—*Higwashi*, *mushig-washi*, *kakemono*, *ame*, conserves, etc.

CLASS 44.—Tea, Coffee, Chocolate, Lump Sugar containing Coffee, etc.

CLASS 45.—Food Stuffs and Seasonings which do not belong to any other class,—Meat, extracts, eggs, *katsubushi*, *nori*, *kombu*, *arame*, *tsukudani*, tinned provisions, *miso*, *namemono*, pickles, pepper, etc.

CLASS 46.—Animal milk, Dairy Products and Imitations thereof,—Condensed milk, cream, cheese, powdered milk, etc.

CLASS 47.—Grains, Vegetables, Seeds, Fruits, Flour, Starch, and Manufactures thereof,—Rice, barley and wheat, millet, sorghum, *hie*, bean, mushrooms, *kampyo*, bulbs, *koji*, malt, baking powder, yeast powder, wheat flour, arrow root, vermicelli, *yuba*, *konnyaku*, frozen *tofu*, frozen *konnyaku*, etc.

CLASS 48.—Tobacco.

CLASS 49.—Smoking Apparatuses and Pouches,—Tobacco pipes, tobacco pouches, pipe-cases, peppermint pipes, pocket-books, etc.

CLASS 50.—Paper and Manufactures thereof which do not belong to any other class, *Motoyui* and *Mizuhiki*,—Japanese paper, European paper, card-board, imitation leather, wall paper, oil-paper, *shibukami*, envelopes, paper cases, *ikkanbari*, blank books, etc.

CLASS 51.—Stationery,—Writing brushes, China ink, stamping ink, material for stamps, writing ink, printing ink, slate pencils, pencils, pens, pen-holders, *suzuri*, inkstands, paper weights, brushstands, pen-racks, slates, paper-fasteners, pencil-sharpeners, etc.

CLASS 52.—Hides, Leathers and Manufactures thereof which do not belong to any other class, and Bags of all kinds,—Furs, leather, harness, letter-cases, leather belts, catguts, etc.

CLASS 53.—Fuel,—Coal, coke, fire wood, charcoal, *tsukegi*, pulverized charcoal for pocket stoves, etc.

CLASS 54.—Matches.

CLASS 55.—Oils and Wax,—Petroleum, vegetable oil, fish oil, wax, candles, fats, etc.

CLASS 56.—Fertilizers,—Dried sardine, herring refuse, oil cake, flesh-meal, bone dust, blood-meal, rice bran, phosphatic manures, mixed manures, sulphate of ammonia, etc.

CLASS 57.—Wood, Bamboo, Barks, Bamboo Sheaths, Wood Shavings, etc.

CLASS 58.—Articles made of Wood, Bamboo, Rattan, Barks, Bamboo Sheaths, their Lacquer Works and Gold Lacquer Works which do not belong to any other class,—Joinery works, turned

wares, boxes of chip-wood, basket works, braided works, pails and tubs, chip braids, etc.

CLASS 59.—Tortoise Shells, Horns, Husks, Shells, etc., Imitations thereof which do not belong to any other class, and Celluloid and Manufactures thereof which do not belong to any other class.

CLASS 60.—Straw, Grass and Manufactures thereof which do not belong to any other class,—Wheat straw, rush mats, straw mats, *kasa*, ropes, straw-braids, etc.

CLASS 61.—Umbrellas, Canes, Footgear and their Accessories, —Japanese umbrellas, European umbrellas, canes, shoes, *geta*, *zori*, *setta*, *hanao*, *tsumagake*, etc.

CLASS 62.—Folding Fans and Round Fans.

CLASS 63.—Lighting Apparatuses and Parts thereof,—Lamps, candlesticks, lanterns, electric light bulbs, lamp shades, electric lamp sockets, filaments for electric light, gas burners, gas mantles, carbon sticks for arc light, pocket electric lamps, wicks, etc.

CLASS 64.—Brushes and False Hairs.

CLASS 65.—Toys, Articles for Use in Sports or Games, Artificial Flowers, *hanakanzashi*, etc.,—Balls, *go*, chess, dolls, tops, bows, billiard set, *oshiye*, playing cards, etc.

CLASS 66.—Drawings and Pictures, Picture Albums, Books, Newspapers, Magazines, etc.

CLASS 67.—Merchandise not belonging to any other class.

ARTICLE XXI.—The provisions of Articles I to III, inclusive, Articles V to XXXIX, inclusive, Articles XLVIII to LII, inclusive, Article LVII, Article LX, Article LVII, Article LXVIII, Articles LXX to LXXXV, inclusive, Articles LXXXVII to XC, inclusive, and Article XCIII of the Regulations for the Enforcement of the Patent Law are applicable *mutatis mutandis* to trade marks.

ARTICLE XXII.—The provisions of these Regulations are applicable *mutatis mutandis* to marks (*hyosho*).

### *Japanese Trade Mark Law.*

The principle of the superior rights of the prior user is recognized in the provision, that marks identical with or similar to marks belonging to another person and well known to the public, and which are used on identical goods, cannot be registered. The further provision prohibiting the registration of marks "calculated to deceive the public" under which many fraudulent registrations have been cancelled during the past year is still retained.

In general, however, the legal rights relating to trade marks are held to arise out of the registration, and where two or more persons have each a recognized right, the first registrant will prevail.

A registration made may be cancelled if the owner does not

use his trade mark within the empire within a period of one year from the time of its registration or shall cease for a period of three years to use it in Japan unless the mark be one that has been registered as a foreign registered trade mark.

Under the old law, marks the same as, or similar to, those used by another before July 1, 1899, could not be registered, but, under the new law, several persons who have made bona fide use of identical or similar marks on the same goods, previous to the date named, may each register, so that two or more parties may concurrently use the same registered trade mark.

Another important improvement in the present law is that, in a case of prosecution for piracy of a trade mark, it will not be necessary to prove that the defendant knew that the mark pirated had been registered. The Patent Bureau will give notice through an official journal of all registered marks and other matters connected therewith. On the other hand, when three years have elapsed from the publication of a trade mark in the journal, a prosecution cannot be based upon the fact that the trade mark is claimed to infringe.

While the new statute on the whole is an improvement upon the one previously in force, nevertheless it is a compromise between the declarative and attributive systems of trade mark registration, between the system which on the one hand recognizes priority of use and that on the other hand which recognizes priority of registration, as the basis of trade mark rights.

#### *Protection of Unregistered Trade Marks.*

Under the new trade mark law of Japan, a mark is forbidden registration, which is identical with, or similar to any mark already known to the public and employed for the same class of goods in that country. This provision is intended to put a stop, so far as possible, to attempts upon the part of applicants to register trade marks which belong to others. Under this clause, owners of trade marks known in the country but not yet registered may oppose an attempt to register their trade mark by another. It is possible for foreign owners of trade marks to communicate their marks to the Japanese Patent Office, so as to give notice to that office of the fact that the marks are known and used in Japan, and thereby to forestall in a measure the attempt of anyone else to register these or similar marks. The Japanese Patent Office has shown its evident desire to protect such owners of trade marks by providing a form in which such information may be given, to-wit: in a communication setting forth that the house has, during several years, used its marks upon the Japanese market, giving the date when for the first time the mark was introduced into Japan, with the exhibits proving this date, names and addresses of houses with whom trade has been conducted in Japan, a statement of the quantity and value of the importa-

tions yearly into Japan and any other evidence, exhibits or commercial papers to prove that the mark is well known in that country. At the same time the director of the Patent Office advises, as the proper method of obtaining protection for a trade mark, that it be registered under the law rather than that reliance be put upon the prevention of its registration by any other.

The provisions of this law appear to have been given a retroactive effect. Thus, in the year 1903, a Japanese registered as his own trade mark "Monarch of the Oaks." An attempt was made to annul the mark, but it was claimed that under Article 10 of the old law, under which it was registered more than three years having elapsed since the registration, the mark could not be cancelled. The judge held, however, that the foreign mark was well known since 1900 in Japan upon goods imported under the mark, and decided that the mark of the Japanese should be cancelled. Like decisions appear to have been rendered in favor of several other foreign marks.

We quote the substance of a communication from the Director of the Japanese Patent Bureau, relative to the rejection of trade marks applied for, when the marks are known to belong to others than the applicants, or to resemble the marks of such other person :

"In consequence of the coming into operation of the new Japanese trade mark law on the first November, a mark known to the public to belong to a certain person now receives an indirect protection under Article 2 (5) which prohibits the registration of marks identical with, or similar to marks belonging to another person, which are well known to the public, and are used on the same kinds of goods. While the advisability of obtaining the registration of trade marks remains undiminished under the new law, the owner of the unregistered trade mark, should he desire to enjoy the benefit of the provision referred to, must make it clear that his mark is well known to the public, and in order to establish this fact it is not sufficient to say that a specimen is filed at the Japanese Patent Office. Accordingly, in sending specimens of unregistered British trade marks to that office, it is now highly desirable to state where and how long the marks have been used, and to give any other particulars which establish the fact that they are well known to the public." (Trade Marks Journal, March 2, 1910, p. 309.)

From this it is evident that the Japanese government is doing all that it can reasonably be expected to do, to discourage the practice of misappropriation of trade marks by unscrupulous traders. No doubt much of the agitation over the infringement of marks in Japan, and much of the reproach which has been



heaped upon this country, arises from matters which the government was powerless to prevent, in view of the neglect of the rightful owners of the marks themselves to register their marks, as provided by the law. When, through such neglect, the mark is misappropriated by an unscrupulous trader, the owner thereof suffers no more than the usual and appropriate penalty of his own neglect.

It is probable that manufacturers whose trade marks are infringed upon experience sufficient difficulty in effecting the punishment of the infringer, even under the most favorable circumstances, a condition which makes it all the more important that they should omit no step that may assist their efforts in this direction. Efforts to prosecute the infringers, have, it is said, to a great extent, failed, owing to the peculiar views of the Japanese law officials, that one case of infringement is not sufficient evidence of violation of a trade mark. It seems that according to the Japanese view, there must be proof of continuous violation and repeated sales of the offending goods before a conviction can be had of the party offending. A single sale of infringing goods and its subsequent production in evidence before the court, is said to be insufficient to procure the conviction of the offender.

#### *Decisions.*

The status of the "Black and White" whiskey trade mark which has been the subject of litigation before the Japanese courts has reached a new and more gratifying phase in a recent decision of the Japanese Patent Office, which holds that the trade mark registered by the Japanese merchant, and which appears to be that for the use of which he was prosecuted, is void. Its cancellation was decreed. The trade mark of Buchanan & Co., as registered in Japan, consisted of the words "Scotch Whiskey, Black and White, Specially Selected for the House of Commons," followed by the name and address of the company. The trade mark afterward registered by the Japanese infringer showed the same words, except that they were prefixed by the word "Old" and followed by the name and address of the Japanese registrant, while in the middle of the label was the representation of a bird with outspread wings within a circle and a lion rampant on either side of the circle. The defendant claimed that this figure or emblem was sufficiently conspicuous to make his label easily distinguishable from that of Buchanan & Co. The Patent Office said, however, that on the whole it was evident that they were made from the same design, were identical in their prominent features, and could easily be mistaken at a distance one for the other. Accordingly, the cancellation of the latter mark was decreed.

This decision gives point to the statement contained in a letter

of the President of the Chamber of Foreign Commerce at Yokohama as to the best way of obtaining protection in Japan against trade mark infringers. In cases where both marks are registered, he advises that it is preferable to start a proceeding in the Patent Office rather than before the ordinary courts. The decision of the Patent Office is followed by the courts upon the question of resemblance between the marks when compared one with the other, or upon any other point litigated between the parties. The proceeding in the Patent Office establishes, therefore, both the right to the mark and the fact of infringement, and furnishes the basis for a criminal or civil action afterward, if the evidence produced will warrant it.

#### *Interfering Marks.*

The Japanese Patent Office has rendered a decision of some interest on appeal from the examiners, on the question of registrability of a trade mark. The mark was objected to by the examiners upon the ground that it was liable to confusion with one previously registered. The marks had in common the representation of the bust of a woman, but the one registered was represented in a small frame in the shape of a shield, with the face turned toward the left, while the other showed the head of a woman, turned in the opposite direction, in the act of inhaling a flower held in her hand, and accompanied by the name "Divinia" and various decorative features. It was claimed by the applicant that in view of the difference in appearance between the marks, and particularly in view of the applicant's use of the name "Divinia," which gave to his mark a distinctive appellation, there was no liability to confusion between the two. The examiners held to the contrary, but their decision was reversed, it being held that the mere presence of the representation of the head of a woman in the two marks, did not give them such resemblance as would cause liability to confusion. (La Prop. Ind., 1908, p. 102.)

#### *Conflicting Trade Marks.*

If a trade mark resembles another already registered in the bureau of trade marks, the latter trade mark will not be granted registration. (Trade Marks Law, Art. 2); and even if the application were allowed, the registration could be avoided upon the suit of the prior registrant. (Id., Art. 10.)

The use of the trade mark cancelled will then become illegal, and persistence in its use gives rise to liability to suit for damages and criminal prosecution. (Id., Art. 16.) Moreover, in some cases, the goods wrongfully marked may be destroyed by the authority of the government. (Id., Art. 18.)

If a trade mark has not been registered, but has been used by the owner since prior to July, 1899, a trade mark similar thereto

may not be registered. (Id., Art. 2, Sec. 5.) A mark wrongfully registered, in violation of this section, may be annulled at the suit of the party aggrieved.

Infringement of trade mark rights arises when the same or a similar trade mark is used upon the same goods as those to which the former mark is applied. The use of the same mark upon different goods constitutes no infringement. For instance, a man may use for wine a trade mark similar to that used by another for tobacco.

The tests whereby one can judge whether trade mark rights have been infringed upon are similarity, first, in appearance; second, in sound; third, in meaning. The following decisions in cases of contested registrations are illustrative of the manner in which these principles are applied by the Japanese trade mark registration bureau and by the courts.

Application having been made for the registration for a mark for soap, consisting of two dragons, on either side of a horse's head, bridled and facing to the right, registration was refused because of an earlier mark for the same goods consisting of a horse's head, unbridled, within a horse shoe, and facing in the opposite direction. This ruling was reversed by the court, which held that the differences were such as completely to differentiate the two marks.

The owner of a registered mark brought suit against a later registrant for infringement. The marks consisted of two Japanese words. The court held with the plaintiff on the ground of similarity in the meaning of the two words, and general resemblance in appearance, which, combined, were calculated to mislead and deceive the public.

The decision of the Patent Office, rejecting a trade mark application which had, in common with an earlier registration, as a prominent feature, the representation of the god of blessing, riding on a soaring stork, was sustained on appeal to the court. The latter tribunal held that the distinctive features in the two marks, scrolls and pine trees, were of minor importance and insufficient to differentiate the marks.

In a suit between the registrants of two trade marks for matches, displaying as prominent features the same style of representing the words "Best Match," the court held the action of the plaintiff well founded.

The Japanese Patent Office, under date of August 16, 1904, decided a curious case involving the validity of a trade mark registered in that country.

The trade mark consisted of the letters "D. R. G. M." It appeared that these letters were in common usage in Germany as an abbreviation of the words "Deutsche Reichsgebrauchsmuster," or "German Design Patent," which signified that the article to which the letters are attached is the subject of a design patent of the German Empire.

Held, by the Japanese Patent Office, that in view of the familiar meaning of the German abbreviation, its use as a trade mark was calculated to convey the false impression that the articles to which it was attached were protected by a German design patent. It therefore declared the registration invalid. (China Import, Export and Bank Co. vs. Sumi Rikichi, Blatt für Patent, Muster- und Zeichenwesen, 1905, p. 15.)

### *Trade Mark Infringement.*

The difficulty which existed under the old law of Japan in prosecuting infringers has been, to some extent, removed. Four counterfeiters, whose acts had been discovered and against whom suit was brought as a means of settling, executed the following confession, indicating thereby their wholesome dread of the penalties which the law might otherwise inflict upon them:

“We the undersigned, knowing that the copper paint of the Woolsey Paint Color Company of the United States (generally known under the name of dock paint) enjoys a good reputation and is very much appreciated by the consumers, have imitated the trade mark of the paint, the woman and dragon, and have applied this mark to an inferior article, and have sold the same. This fact was discovered and we were enjoined from continuing these acts and prosecuted therefor; but with great generosity you have waived the prosecution therefor; for which we are very grateful. We pray you to be so good as to excuse our misconduct and we swear that in the future we will not be guilty of any similar wrong.

“All the counterfeit marks found in our possession have been destroyed.” (La Prop. Ind., 1911, p. 15.)

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## LEEWARD ISLANDS

The total population in 1911 was estimated at 141,000. The administration consists of a Governor, an Executive Council appointed by the Crown; also a Legislative Council appointed by the Crown.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

### *Laws.*

Act No. 33 of 1887, No. 17 of 1890 and August 10, 1895.

*Duration.*

Fourteen years; renewable.

1. At a time not being less than two months nor more than three months before expiration of fourteen years from the date of registration of a trade mark, the Registrar shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the Registrar before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee; and if such fee be not previously paid, he shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect.

2. If such fee be not paid before the expiration of such fourteen years the Registrar may after the end of three months from the expiration of such fourteen years remove the mark from the register, and so from time to time at the expiration of every period of fourteen years. (Art. 20.)

*What May Be Registered.*

(a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(c) A distinctive device, mark, brand, heading, label, or ticket; or

(d) An invented word or invented words; or

(e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in this section any letters, words or figures, or combination of letters, words or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3) Provided as follows:

A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof. (Art. 4.)

*Mode of Application.*

Any person, whether a British subject or an alien, desiring to register a trade mark shall apply to the Registrar by sending to

him a statement accompanied by such declaration as is herein-after mentioned and the prescribed fee. (Art. 5.)

The statement shall contain the following particulars:

- A. The name and address and calling of the applicant; and
- B. The description or reference to a description of the trade mark to be registered; and
- C. The class or classes of goods, being some one or more of the classes mentioned in the first schedule, and the particular description or descriptions of goods in such class or classes, with respect to which he desires the trade mark to be registered; and
- D. In the case of a trade mark already in use a description of the goods in respect of which it has been used and the length of time during which it has been so used. (Art. 6.)

The above statement must bear a date and be signed by the applicant. Subject to any other directions that may be given by the Registrar, the statement sent to the Registrar shall be upon foolscap paper, of a size of thirteen inches by eight inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half. (Art. 7.)

Subject to any other directions that may be given by the Registrar, a description of a trade mark shall be given in writing and shall be accompanied, when practicable, by a drawing or other representation in duplicate, not less than three inches square, on foolscap paper of the size aforesaid, or by a specimen of the trade mark pasted, or otherwise fastened, on such paper. When a drawing or other representation or specimen cannot be given in a manner aforesaid, a specimen or copy of the trade mark may be sent, either of full size, or on a reduced scale, and in such form as may be thought most convenient.

The Registrar may, if dissatisfied with the representation of a trade mark, require a fresh representation, either before he proceeds with the application, or before he registers the trade mark.

The Registrar may also, in exceptional cases, deposit in such place as the Governor shall direct a specimen or copy of a trade mark which cannot conveniently be placed on his register, and may refer thereto in his register in such manner as he thinks advisable. (Art. 8.)

Where an application for the registration of a trade mark is made by or on behalf of a corporate or quasi-corporate body of persons, the statement and declaration shall be made by the Secretary or other principal officer of the body of persons; and the Registrar may require such proof as he thinks fit that the application made is duly authorized by such body of persons. (Art. 10.)

As soon as may be after the receipt of an application made as provided by these rules, the Registrar shall forward the same or a copy thereof to the Colonial Secretary for advertisement in the

Leeward Islands Gazette and shall require the applicant to insert an advertisement thereof in some local newspaper during such time and in such form and generally in such manner as the Registrar may think desirable, and stating the length of time during which the mark has been used. (Art. 12.)

For the purposes of such advertisement, the applicant may be required to furnish a woodblock or electrotype of the trade mark of such dimensions as may from time to time be directed by the Registrar, or such other information or means of advertising the trade mark as may be allowed by the Registrar. (Art. 13.)

On the expiration of the three months from the date of the first appearance of the advertisement in the Leeward Islands Gazette the Registrar may, if he is satisfied that the applicant is entitled to registration, register the trade mark in respect of the description of goods for which he may be entitled to be registered, and the applicant as the proprietor thereof, on payment of the prescribed fee. (Art. 15.)

Upon registering any trade mark the Registrar shall enter in the register the date on which the statement relating to the application for registration was received by the Registrar (which day shall be deemed to be the date of the registration) and such other particulars as he may think necessary, including the name and address of the proprietor. (Art. 16.)

#### *Opposition.*

A notice of opposition may be given by sending to the Registrar, together with the prescribed fee, a written notice in duplicate, on foolscap paper of such size as aforesaid, stating the grounds of the opposition. The applicant's counter-statement in duplicate shall also be written on foolscap paper of such size as aforesaid. (Art. 14.)

#### *Assignment.*

A trade mark, when registered, shall be assigned and transmitted only in connection with the good will of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill. (Art. 11.)

#### *Fees.*

On application, £1; on completion, £1.

#### *Classification.*

Same as British.

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## LIBERIA

Liberia is a free and independent negro Republic of Western Africa. In point of situation it occupies the Grain or Pepper Coast of Northern Guinea, and comprises an area of about 45,000 square miles. It has about 350 miles of coast line and

stretches inland to an average of 150 miles. The population in 1911 was estimated at 2,200,000. The principal imports are cotton goods, etc.

MONEY—One dollar (100 cents)=4s. 2d.= \$1.00 United States.

WEIGHTS AND MEASURES—Same as Great Britain.

#### *Laws.*

December 22, 1864, and February 1, 1900.

It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled.

Sec. 1. That from and after the passage of this Act, any person, whether Liberian citizen or foreigner, shall have the privilege of registering a "Trade Mark" or "Trade Marks" under the sanction and protection covering the granting of Letters Patent of said Act of 1864; the applicant in all cases furnishing the Department with a clear, concise description of such trade mark, together with an accurate drawing of the design to be registered.

Sec. 2. It is further enacted that the fee for registering a trade mark under this Act shall be ten dollars.

Any law to the contrary notwithstanding.

Approved February 1, 1900.

#### *Requirements.*

Power of attorney; description of the goods and five copies of the Mark. (Form for application may be obtained from B. Singer's Offices.)

#### *Assignment.*

Assignments must be recorded in the Office of the Secretary of State within one year from date of execution thereof.

#### *Infringement Suits.*

All suits, controversies and cases arising under this Act shall be cognizable, as well in equity as at law, by the Supreme Court of the Republic of Liberia.

## LUXEMBOURG

The area of the Grand Duchy of Luxembourg is about 1,000 square miles. The population in 1911 was estimated at 246,000. Luxembourg belongs to the German Zollverein.

The manufacture of leather gloves is one of the chief industries of Luxembourg. The materials—lamb and kid skins—are imported from all parts of the world. Mining and smelting are also very important industries.



MONEY, WEIGHTS AND MEASURES—Same as Germany.

*Laws.*

March 28, 1883. Decree of May 30, 1883.

*Duration.*

Ten years; renewable. (Art. 7.)

Foreign trade marks are protected only so long as they are protected in the country of origin. (Art. 9.)

*Who May Apply.*

The first user of the mark is alone entitled to registration. No one can claim an exclusive right to a mark until he has deposited it for registration.

Foreigners who have industrial or commercial establishments in Luxembourg are entitled to the benefit of the law. Any person engaged in industry or commerce in another country which, by international convention, accords reciprocity to Luxembourg marks, may have the benefit of the law so long as his mark is protected in his own country. (Art. 9.)

*What May Be Registered.*

Any mark serving to distinguish the products of an industry or articles of trade is considered a trade mark.

The name of a person or of a firm in the distinctive form given it by the party interested may serve as a mark. (Art. 1.)

*Mode of Application and Requirements.*

The application should be made in person or by representative. It must be accompanied by a receipt for the payment of the tax; two specimens of his mark on detached cardboard, not to exceed 8 x 10 centimeters; a block (cliche), not to exceed the above dimensions of metal in high relief (the lettering may be in intaglio but must be clear cut); a brief description in French or German with a statement as to whether it is raised upon or impressed into the goods, and whether the mark has been reduced in order not to exceed the required dimensions. This description must be signed by the applicant. (Art. 3.)

No one can lay claim to the exclusive use of a mark if he has not deposited a specimen in duplicate and a typographical block in the hands of the officer designated by the Government. (Art. 2.)

*Assignments.*

Trade marks cannot be transferred except with the transfer of the business. All transfers between living persons must be

recorded. Unless recorded, a transfer is without effect as to third parties. (Art. 10.)

*Fees.*

For registration, 10 francs; for assignment, F. 1.70.

*Infringement and Penalties.*

Counterfeiting and fraudulent use or sale are punishable by fine (26 to 2,000 francs) or imprisonment (eight days to six months), or both. (Art. 14.)

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## MALTA AND GOZO

Malta is a British Colony and is the principal of a small group of islands in the Mediterranean, consisting of Malta, Gozo and Comino.

The area of the Island of Malta, inclusive of Gozo, is 117 square miles. The length is about 17 miles and its breadth about 9 miles. The population in 1911 was estimated to be 216,000.

The principal products of the island are potatoes, fruit, corn and some cotton, which are exported principally to Great Britain. The port of Valetta is a vast entrepôt for coals, which are forwarded thence to the Mediterranean and Eastern ports.

MONEY—Same as Great Britain.

WEIGHTS AND MEASURES—Maltese Caffiso=4½ Imp. Galls. salma=1 Imp. quarter; cantar=175 lbs. avoirdupois; rotolo=1.745 lbs. avoirdupois.

*Laws.*

Ordinance No. 11 of 1899. Regulations of October, 1902.

*Term.*

Fourteen years; renewable.

*What May Be Registered.*

Marks intended to distinguish the produce of any industry or articles of trade are considered to be trade marks, provided they contain at least one of the following particulars:

1. A name of an individual or a firm or a commercial partnership, printed, impressed, or woven, in some particular and distinctive manner,

2. A written signature or copy of a written signature of the individual applying for registration thereof as a trade mark.

3. A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use. (Art. 72.)

The marks and words referred to in the preceding article must be different from those already legally used by other persons.

Any words or figures, or a combination of words and figures, may, however, in a trade mark, be added to one or more of the particulars indicated in the first paragraph of this article. (Art. 73.)

#### *Mode of Application.*

Whoever is willing to secure for himself the exclusive use of any trade mark, shall present an application to the Comptroller accompanied by:

1. Two representations of the trade mark.

2. A declaration, in duplicate, stating the kind of articles to which it is intended to affix the mark, and stating whether the mark is to be affixed to articles produced by the declarant, or to goods of his trade.

3. A description, in duplicate, of the mark.

4. A receipt or a declaration from the Receiver-General showing the payment of the fee for registration of trade marks. (Art. 75.)

#### *Notice of Application to Be Published.*

A notice of application for registration of a trade mark shall, as soon as possible, be given by the Comptroller in the Government Gazette and in two other periodical newspapers. (Art. 79.)

#### *Requirements.*

Two prints; declaration in duplicate; description in duplicate; block or electrotype of the trade mark, of such dimensions as may from time to time be directed by the Comptroller, or with such other information or means of advertising the trade mark as may be required by the Comptroller; and the Comptroller, if dissatisfied with the block or electrotype furnished by the applicant, may require a fresh block or electrotype before proceeding with the advertisement.

When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in Article 83 of Ordinance No. 11 of 1899, the applicant may be required to furnish a block or electrotype (or more than one if necessary) of any or of each of the trade marks constituting the series; and the Comptroller may, if he thinks fit, insert with the

advertisement of the application a statement of the manner in respect of which the several trade marks differ from one another.

The blocks or electrotypes furnished must correspond exactly with the representations, must afford perfectly distinct impressions of the marks, and must be upon a scale sufficiently large to reproduce the marks faithfully; worn or mutilated blocks or electrotypes will not be accepted.

The largest space available for the insertion of any single block or electrotype is seven inches broad by ten inches deep.

When a block or electrotype exceeds two inches in depth or breadth, a charge for additional space will be made, at the rate of two shillings for every inch or part of an inch in depth or breadth beyond the two inches.

The blocks or electrotypes supplied for the advertisement of trade marks cannot in any case be returned to applicant.

(Forms of application may be obtained from B. Singer's Offices.)

#### *Opposition to Application.*

Any person may, within two months from the publication of the notice referred to in the preceding article, present to the Comptroller, in duplicate, an act of opposition to the said application, and one copy of the act of opposition shall be sent to the applicant with an intimation that he may send, in duplicate, a statement of the grounds against the opposition.

If the applicant does not send such statement, his application shall be considered as abandoned; but, if he sends that statement, it shall be communicated to the person who made the opposition.

Such opposition shall be considered as withdrawn if the person who made it shall not, by citation, demand in the competent civil court that registration be not granted, and shall not, on filing the citation, give sufficient security for the costs of the suit.

#### *Penalty.*

The punishment of imprisonment or hard labor from four months to one year shall be applicable to whoever—

1. Shall forge or alter, without the consent of the proprietor, the names, marks or distinguishing signs of intellectual productions, or of the product of any industry, or knowingly make use of such forged or altered names, marks or signs, without the consent of the owner, although they be forged or altered by others.

2. Shall forge or alter, without the consent of the proprietor, any designs or models of manufacture, or knowingly make use of such forged or altered designs and models of manufacture, although they be forged or altered by others.

3. Shall knowingly make use of any mark, sign, signboard, or emblem, bearing an indication calculated to deceive a purchaser as to the nature of the production, or sell any production with such marks, signs or emblems.

4. Shall, by trading in any goods in reference to which a trade mark has been registered, suppress that mark without the consent of the proprietor thereof.

5. Shall apply to any goods a false trade description, that is to say, shall apply thereto, forged or altered, a figure, word, or mark which according to commercial usage indicates (a) the number, quantity, measure, gauge, or weight of the goods; (b) the place or country in which the goods were made or produced; (c) the mode of manufacturing or producing the goods; (d) the fact that the goods are the subject of an existing patent, privilege, or industrial copyright.

For the purposes of this subsection, any figure, word, or mark which, according to the custom of the trade, indicates any of the above matters, shall be deemed to be a trade description thereof.

6. Shall knowingly put into circulation, sell, or have in his possession for sale, or introduce from abroad for any purpose of trade, any goods having a fraudulent imitation of a mark, sign, or emblem.

7. Shall knowingly make, have in his possession, or transfer to any person, any die, block, machine, or other instrument, for the purpose of forging, or of being used for forging, a trade mark. (Art. 281.)

*Article 281 of Criminal Laws Amended.*

The punishment of imprisonment or hard labor from four months to one year shall be applicable to whoever:

1. Shall forge or alter, without the consent of the proprietor, the names, marks or distinguishing signs of intellectual productions, or of the product, of any industry, or knowingly make use of such forged or altered names, marks or signs, without the consent of the owner, although they be forged or altered by others.

2. Shall forge or alter, without the consent of the proprietor, any designs or models of manufacture, or knowingly make use of such forged or altered designs and models of manufacture, although they be forged or altered by others.

3. Shall knowingly make use of any mark, sign, signboard, or emblem, bearing an indication calculated to deceive a purchaser as to the nature of the production, or sell any production with such marks, signs or emblems.

4. Shall, by trading in any goods in reference to which a trade mark has been registered, suppress that mark without the consent of the proprietor thereof;

5. Shall apply to any goods a false trade description, that is to say, shall apply thereto, forged or altered, a figure, word, or mark which, according to commercial usage, indicates

- (a) The number, quantity, measure, gauge, or weight of the goods;
- (b) The place or country in which goods were made or produced;
- (c) The mode of manufacturing or producing the goods;
- (d) The fact that the goods are the subject of an existing patent, privilege, or industrial copyright.

#### *Imported Goods.*

The importation of goods, which, if sold, would, under this Ordinance, be liable to forfeiture, and also all goods manufactured out of these islands and out of the United Kingdom, bearing any Maltese or English name or trade mark, and not being, in the latter case, accompanied by a definite indication of the country in which such goods were produced, is prohibited.

This provision shall not be applicable to goods which shall be landed in these islands to be re-exported. (Art. 115.)

Forfeiture shall take place ipso jure if within one month from the date of the publication of a notice hereunder referred to, they are not claimed by any one.

The said notice shall indicate the articles to be forfeited and the cause of forfeiture; shall state that, unless claimed by an official letter or by any other letter addressed to the person who signed the notice, within one month from the date of such notice, the said goods shall be forfeited; shall be signed by the Collector of Customs; shall be published twice with an interval of at least fifteen days, in the Government Gazette and in any other periodical newspaper, and shall be posted up at the entrance of the Custom House and in the Commercial Exchange. (Art. 116.)

If the goods are claimed, the Crown Advocate shall, as soon as possible, apply to the First Hall of Her Majesty's Civil Court by way of petition for an order for the forfeiture of the goods seized. (Art. 117.)

The Collector of Customs may, before refusing to deliver the goods referred to in Article 115, and before proceeding, after the publication of the said notice, with a view to the forfeiture of the said goods, and the Crown Advocate may, before instituting the proceedings mentioned in the preceding Article, require the provisions of the regulations hereunder named to be complied with by the parties concerned, and they shall satisfy themselves, in accordance with those regulations, that the said articles are among those the importation of which is prohibited under this Ordinance. (Art. 118.)

## MAURITIUS

The area of this island and its dependencies, etc., is about 705 square miles, or 432,680 acres. The estimated population in 1911 was 385,500.

The principal imports consist of machinery, coals, rice, corn and grain, cotton goods, fertilizers and preserved provisions.

MONEY—1 rupee (100 cents)=1s. 4d.=32 cents U. S.

WEIGHTS AND MEASURES—The metric system.

*Laws.*

No. 18 of 1868, No. 13 of 1888, No. 6 of 1896, No. 28 of 1892.

*Duration.*

Unlimited.

*Who May Register.*

Any person, whether a subject of His Majesty or not, and any body corporate or body of the like nature, whether constituted according to the law of this Colony or of any of His Majesty's Dominions, or according to the law of any foreign country, and also any company, association, or society of persons, whether some of the members thereof be subjects of His Majesty and some of them not, and whether such body corporate, body of the like nature, company, association, or society be established or carry on business within this Colony or elsewhere, or partly within this Colony and partly elsewhere. (Art. 1.)

*What May Be Registered.*

"Mark" shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any other description.

"Trade Mark" shall include any and every such name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket or other mark as aforesaid lawfully used by any person to denote any article of trade, manufacture or merchandise, to be an article or thing of the manufacture, workmanship, production or merchandise of such person, or to be an article of any peculiar or particular description made or sold by such persons.

No mark shall have the character of a trade mark in this Colony until it has been duly registered in manner as hereafter provided.

*Mode of Application.*

Every person wishing to register a trade mark which he has a right to use, shall, for that purpose, either by himself or by any party duly authorized by him on that behalf, make application in writing to the Collector of Customs.

The application shall state what article of trade, manufacture or merchandise, being the manufacture, workmanship, production or merchandise of the applicant, such trade mark is intended to denote; and it shall further state, if necessary, to what peculiar or particular description of such article the said trade mark is intended to apply. To the said application shall be joined a facsimile of the trade mark to be registered. (Art. 3.)

The Collector of Customs shall keep a register of trade marks duly numbered and initialed by one of the Magistrates of Port Louis, upon which he shall transcribe every application made to him as aforesaid. He shall mention in the margin of the transcription the date when he received the application, and he shall give a number to each such application. He shall make the same mention, and affix the same number upon the trade mark deposited with him, and he shall file and keep the said trade mark in a proper and convenient place in his office. He shall then return to the person who has applied for the registration of a trade mark, the written application made by such person, after endorsing thereupon a certificate of registry in the form of Schedule A.

Every person who has caused a trade mark to be registered shall give notice thereof in three daily newspapers, and such notice shall contain a summary description of the trade mark and the date of its registration.

The Collector of Customs shall in the beginning of each month publish in the Gazette a list containing the names of the parties who have registered trade marks, the date of registration and a summary description of the trade mark registered. (Art. 4.)

Every trade mark deposited with the Collector of Customs and touching which a certificate of registry has been delivered by the Collector, shall, in every court in this Colony, be presumed to be a genuine trade mark, unless proof to the contrary be adduced, and it shall be, as such, admissible in evidence in every criminal prosecution under this Ordinance as well as in every Civil action which the proprietor of the trade mark may be entitled to, at law, in equity, or otherwise. (Art. 5.)

A fee of Rs. 10 shall be paid into the hands of the Collector of Customs, for each certificate of Registry delivered by him. (Art. 6.)

Upon payment of a fee of R. 1, it shall be lawful for any person to examine the register of trade marks kept by the Collector of Customs, as well as the trade marks filed in his



office. The fees mentioned in this Article and in the preceding one shall be paid into the Treasury. (Art. 7.)

#### *Requirements.*

Power of attorney; five specimens of the mark; three electros. (Form for application may be obtained from B. Singer's Offices.)

#### *Offenses and Penalties.*

Every person who—

- (a) Forges any trade mark; or
- (b) Falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or
- (c) Makes any die, block, machine, or other instrument for the purpose of forging or of being used for forging a trade mark; or
- (d) Applies any false trade description to goods; or
- (e) Disposes of or has in his possession any die, block, machine or other instrument for the purpose of forging a trade mark; or
- (f) Causes any of the things above in this Article mentioned to be done, shall, subject to the provisions of this Ordinance, and unless he proves that he acted without intent to defraud, be guilty of an offense.

Every person who sells, or exposes for, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark, or mark or false trade description is applied or to which any trade mark, or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall unless he proves—

(a) That having taken all reasonable precautions against committing an offense against this Ordinance, he had at the time of the commission of the alleged offense no reason to suspect the genuineness of the trade mark, or mark, or trade description; and

(b) That on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) That otherwise he had acted innocently, be guilty of an offense.

Every person guilty of an offense against this Ordinance shall be liable—

1. To imprisonment, not exceeding two years, and to a fine not exceeding Rs. 1,000; and
2. In any case to forfeit to His Majesty every chattel, ar-

ticle, instrument, or thing by means of or in relation to which the offense has been committed.

The court before whom any person is convicted under this Article may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

### *Prohibition on Importation.*

Whereas, it is expedient to make further provision for prohibiting the importation of goods which if sold, would be liable to forfeiture under this Ordinance—

1. All such goods, and also all the goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the Colony, and subject to the provisions of this Article, shall be included among goods prohibited to be imported as if they were specified in Article 12 of Ordinance No. 8 of 1854.

2. Before detaining any such goods, or taking any further proceedings with a view to a forfeiture thereof under the law relating to the customs, the Collector of Customs may require the regulations under this Article, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited by this Article to be imported.

3. The Governor in Executive Council may make regulations, either general or special, respecting the detention and forfeiture of goods, the importation of which is prohibited by this Article, and the conditions, if any, to be fulfilled before such detention or forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this Article, and the mode of verification of such evidence.

4. Where there is on any goods a name which is identical with or a colorable imitation of the name or a place in the United Kingdom, that name, unless accompanied by the name of the country in which such place is situated, shall be treated for the purposes of this Article as if it were the name of a place in the United Kingdom.

5. Such regulations apply to all goods, the importation of which is prohibited by this Article, or different regulations may be made respecting different classes of such goods or of offenses in relation to such goods.

6. The regulations may provide for the informant reimburs-

ing the Collector of Customs all expenses and damages incurred in respect of any detention made on his information and of any proceeding consequent on such detention.

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## MEXICO

The Mexican Republic is bounded on the north by the United States, on the south by Guatemala, on the east by the Gulf of Mexico, and on the west by the Pacific Ocean. The area of the Mexican territory is about 767,000 square miles, or about the quarter of the size of the whole of Europe. The population in 1911 was estimated at 15,100,000.

The country is enormously rich in precious metals and minerals, the principal exports of which consist of gold and silver. Most of the gold mines are situated in the State of Sonora and of Lower California, while the principal centers where silver is purchased for export to Great Britain are Pachuca and Oaxaca. In both of these places there are agents who are intrusted with the purchase of ores on behalf of British smelters, but the largest buyers and exporters are Germans, who supply the same smelters in Great Britain, as well as others on the Continent and America.

The principal copper mining centers are: the States of Aguascalientes, Durango, Michoacan and Tamaulipas, those possessing the greatest number being Aguascalientes and Michoacan. The State of Michoacan is the one in which lead is found in great abundance, either nearly pure or else in conjunction with silver.

Coal has been discovered and is now being worked principally in the State of Coahuilla.

MONEY—The peso (100 centavos=2s. 1d.=50 cents U. S.

WEIGHTS AND MEASURES—The metric system.

### *Law.*

Law of August 25, 1903.

### *Duration.*

Twenty years, renewable every twenty years.

### *Applicant.*

Every Mexican or foreigner can register a trade mark. To do so, he must apply to the Patent and Trade Mark Office in person or through an attorney.

Corporations, companies, and all other legal entities generally, have the same right.

The representation and qualification of an attorney may be verified by a simple letter, serving as a power of attorney, which shall be signed before two witnesses, and the office may demand the ratification of the signatures of said letter whenever it may deem convenient to do so. (Art. 4.)

#### *What May Be Registered.*

A trade mark is the characteristic and peculiar sign or name used by the manufacturer, agriculturist, or merchant in the articles which he produces or sells for the purpose of distinguishing them and to indicate their origin.

A trade mark may be especially constituted by the names under a peculiar form, the denominations, labels, wrappers, packages or holders, stamps, seals, vignettes, borders, raised embroidery, filigree, engravings, coat of arms, emblems, reliefs, figures, mottoes, etc., it being understood, however, that this enumeration is simply made for the purpose of illustration, the application of trade marks not being limited to said articles. (Art. 1.)

#### *What Cannot Be Registered.*

The following can not be registered as trade marks:

1. Generical names or titles, when the trade mark is intended to protect articles embraced in the group or class to which the name or title refers, inasmuch as the essential requisite, in order that a title or name may serve as a trade mark, is that it be capable of indicating or distinguishing the articles thus protected from other articles of precisely the same description or kind.
2. Everything that is contrary to morals, good customs, or to the laws of the country, and everything that may tend to ridicule ideas, persons, or articles worthy of consideration.
3. The national coat of arms, escutcheon, and emblems.
4. Weapons, escutcheons, and emblems of the States of the Federation, national or foreign cities, foreign nations and states, etc., without their respective consent.
5. The names, signatures, seals and pictures of private persons, without their consent. (Art. 5.)

#### *Renewal.*

In order to obtain renewal of the registration of a trade mark the petition and payment shall be made within the first six months of the last year of the term from which the registration was granted. Delay in applying for a renewal of the mark does not result in a loss of the right to the exclusive use of the mark, but the renewal fee is increased according to the length of the delay. (Art. 16.)

*Mode of Application.*

The registration of a trade mark shall be made without an examination as to its novelty under the exclusive responsibility of the applicant and without prejudice to third parties. (Art. 10.)

The Patent and Trade Mark Office shall make a merely administrative examination of the documents filed, in order to satisfy itself as to whether they are complete and comply, concerning their form, with the requisites provided by this law and the regulations thereof.

Whoever desires to register a trade mark shall file with the Patent and Trade Mark Office an application accompanied by the following:

1. A description of the trade mark, concluding the same with the proper reservations of the same. In said description shall also be stated the following data: The name of the owner, the name of the manufactory or business, should he have any, the place where the latter is situated, and the description of the articles or products to which the trade mark shall be applied.

Should the interested party deem it necessary, a description and drawings of said articles or products may also be attached.

2. Two copies of the foregoing documents.

3. A sample or cut of the trade mark; and

4. Twelve facsimiles of the trade mark, exactly alike, shall be used. (Art. 3.)

If the Patent and Trade Mark Office should find that the documents do not comply with the requisites as to their form, the examination of which it is the duty of said office to make, that the trade mark does not bear the inscriptions referred to in Sec. 3 of Art. 9, or that the article or thing sought to be registered is comprised in the provisions of article 5, in its sections two and three, shall regard the documents as not having been filed and shall make known this fact to the interested party by means of a notice.

(Sec. 2. Everything that is contrary to morals, good customs, or to the laws of the country, and everything that may tend to ridicule ideas, persons, or articles worthy of consideration. Art. 5.)

(Sec. 3. The national coat of arms, escutcheon, and emblems. Art. 5.)

Should the interested party not be satisfied, he may appeal to the courts, in accordance with the provisions of chapter 3 of this law.

Should the Patent and Trade Mark Office be satisfied with the correctness of the document filed, it shall so advise the interested party by means of a notice.

The certificate of registration of a trade mark shall be issued

by the Patent and Trade Mark Office. This certificate duly legalized, together with the documents attached thereto, constitutes the title which proves the right to the exclusive use of the trade mark.

Appeals from any decision of the Patent Office may be taken to the Minister of Fomento (Department of Interior), who may overrule the action of the Director of the Patent Office. However, he very rarely does so. In fact, appeals of any kind are unusual in trade mark cases.

Should the decision of the Department of Interior be adverse, within fifteen days from the time of being informed of the decision, applicant may lodge an appeal with any of the Federal Judges of the Courts of the Federal District. If at the end of that period no appeal shall have been taken the decision cannot be overruled. A period of ten days for introducing the testimony will be set by the Court; at the end of which, time for a hearing will be set within three days, in which the arguments of the parties will be heard. Within five days from the hearing judgment must be rendered. From such judgment appeal may be taken to the Circuit Court, if it be filed within five days.

#### *Documents Required.*

A power of attorney; petition; description of the mark with claims in triplicate; electrotype, and 12 facsimiles of the mark. (Form for application may be obtained from B. Singer's Offices.)

A separate power is required for each individual trade mark. If the applicant is an individual, all that is necessary is for him to sign in the presence of two witnesses, who should also sign in the space provided for their respective signatures.

The question (in the event of the applicant being an incorporated company, as is more generally the case in the filing of trade mark applications) of which of the company officers is entitled to execute a Power of Attorney, without necessitating additional legalization proceedings, has been a matter of dispute for some time, each succeeding official holding a different opinion on the subject, without any regard for the laws of the State or Country, under which the company may have been incorporated. It is beyond question, however, and all are agreed on this one point, that the President and General Manager of a company are so empowered.

So, in order to preclude all possibility of any question being raised regarding the validity of a Power of Attorney so executed, it will be wise to have the power executed by the President of the applicant corporation, or by its General Manager, but preferably by the President.

In the event of legalization being necessary the legal organ-

ization of the corporation and the authority of the officer signing for it must be shown. A Notary Public must certify, under seal, that the company is duly organized and that the person signing is known to him as an official of the company, with full authority to do so. Then the Clerk of the Court having jurisdiction certifies that the Notary Public is a duly authorized Public Official. The foregoing is certified by the nearest Mexican Consul and the signature of the Mexican Consul is authenticated by the Ministry of Foreign Relations, which completes the document.

The petition is preferably made out by the representative of the applicant in Mexico.

The description is cumberdomely detailed, going into every feature of the figures, inscriptions, lines, borders, etc., of the mark and the manner of applying it to the goods protected by it.

Unless specially instructed to the contrary the description is made as general as possible and is not restricted to any particular style of lettering, etc.

The claims are, substantially, a recapitulation of the essential distinctive points of the mark and are incorporated with and form part of the description. The description and claims are signed by the applicant or by his attorney, usually the latter.

The electrotype must not be more than 100 mm. (3.94 inches) nor less than 15 mm. (.5 inch) in width or length and must be exactly 24 mm. thick, measuring from the printing surface to the back of the wooden supporting block.

The electrotype must bear an inscription giving the name of the owner of the mark and his address and must show what kind of a mark it is. If the mark is to be used by manufacturers the words to be inscribed are "Marca Industrial Registrada" or a contraction thereof. If it is to be used by merchants the inscription must read "Marca de Comercio Registrada" or a contraction thereof. In addition to the above, every Trade Mark must, before it is applied to the goods, show the number, under which it was registered, and the date of such registration. As this data cannot be inserted before the registration is finally effected it is always advisable to leave a blank space on the electrotype for their subsequent insertion.

Thus the electrotype accompanying an application for the registration of the trade mark "Spearmint" for the Wm. Wrigley, Jr., Company, of Chicago, Illinois, presents the following appearance:

SPEARMINT  
Wm. Wrigley, Jr., Company,  
Chicago, Illinois,  
Marca Ind. Rgtrda.

No.            de            de            191 .

*Priority.*

The registration of a trade mark shall be void whenever the same has been made in contravention of the provision of this law and the regulations thereof, or when said trade mark had been previously registered by somebody else, if more than two years have elapsed since said registration, or, two years not having elapsed, another had made the registration with a better right. (Art. 15.)

The period of two years is granted to anybody who believes himself to have a better right. The object of this is to make it possible to investigate the priority or possession in case the same mark has been used by another person; that is to say, if another person has made prior use of it, he, who later has made the application, not only does not obtain the registration but loses the fees in cash which he previously deposited upon making the application.

The Mexican law does not provide for a preliminary examination but permits action to the party who believes himself injured for judicial claim to the property and to petition for the annulment of the registration.

*Opposition.*

The law of 1903 is silent on this point.

*Marking Goods.*

The registered trade mark shall bear thereon visible inscriptions, which shall respectively read:

1. Those used by manufacturers, merchants, agriculturists, etc., "Registered Trade Mark," or the same words written in abbreviation, together with the number and date of the registration.

2. Those used by merchants shall read "Registered Commercial Trade Marks," or the same words written in abbreviation, together with the number and date of the registration.

3. Whenever the trade mark consists of names, titles, inscriptions, etc., or of monograms or abbreviations, or when consisting of signs which are not letters, said marks should bear the names, titles, etc., or monograms or abbreviations, said marks shall necessarily bear in a conspicuous or visible manner the name of the owner of the industry or trade, the name of the business, manufactory, etc., should he have any, and the place where the latter is situated. (Art. 9.)

As Section 3 of Article 9 of the law of marks now in force provides, every mark, in order to be registered, ought to bear, when it does not consist of figures or signs which are not letters,



the name of the proprietor of the industry and the location of the factory, etc., except in the case in which the mark in question has been registered in its country of origin, since in that case it may or may not bear these indications, as stated in Article 6 of the Treaty of the International Union for the Protection of Industrial Property. (Any industrial or commercial trade mark, registered in a regular manner in the country of its origin, will be admitted for registration and protected as such, in all the other countries of the Union. Art. 6.) And in regard to the inscriptions to which Sections 1 and 2 of the same Article 9 refers, these are placed on registered marks in order that they shall fill all the requirements that the said law exacts and in order that their owners may make use of the penal actions which the same law grants, it being possible to suppress these inscriptions on the marks registered in their country of origin, if comprised in the mentioned International Union.

#### *Assignment.*

Registered trade marks can be transferred and sold or disposed of like any other right; but it shall be an essential requisite to state thereon the name of the transferee when said trade marks are comprised in the case to which section third of Article 9 refers.

The transfer thereof shall be registered in the Patent and Trade Mark Office, and without this requisite it shall have no effect against a third party. (Art. 12.)

The transfer of a trade mark implies or carries with it the right of industrial or commercial exploitation of the industrial product or commercial articles protected by said trade mark. (Art. 13.)

#### *Fees.*

A fee of five pesos shall be charged for the registration of extension of time of a trade mark.

A fee of one peso shall be charged for the publication of a commercial name.

The following fees shall be charged for the registration of a commercial advertisement:

Two pesos for a five years' registration.

Four pesos for a ten years' registration.

Four pesos for each extension of time of five years.

These fees shall be paid in internal revenue stamps in the form and manner prescribed by the regulations of this law.

Said regulations shall fix the fees which the Patent and Trade Mark Office shall charge for other services, such as registration of transfers, change of place, renewals of the certificates of registration, etc., which fees shall also be paid in internal revenue stamps. (Art. 85.)

*Laws in Force in Mexico to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

Mexico is a signatory of the Convention of Paris of March 20, 1883, and also of the Madrid Arrangement of April 14, 1891, and for the International Registration of trade marks, but she has not yet adhered to the Madrid Arrangement of 1891 for the prevention of false indications of origin. The only law reported upon relates to the protection of trade marks, and prohibits the fraudulent application to goods of another's registered trade mark or of an imitation of a registered trade mark, and also the sale, and putting on sale, or circulation, of goods thus marked. The sale or circulation of goods bearing a trade mark indicating false origin is also prohibited. Under the law referred to prosecutions for the above offenses may be instituted by the Public Prosecutor or at the instance of an aggrieved person. State prosecutions would apparently cost nothing; in other cases a litigant's expenses might range between \$500 and \$5,000. A General Customs Ordinance requires a declaration of the name of the country from which goods proceed.

*Penalties.*

ART. 18: Whosoever applies to the articles that he manufactures or sells, a trade mark already legally in favor of another person, for the purpose of protecting similar articles, shall be punished with imprisonment of one or two years and with a fine of from 100 to 2,000 pesos, or with either of these penalties, at the discretion of the judge.

The same penalty shall be imposed on whosoever, in a like manner, and as provided by the preceding paragraph, should apply to his articles or merchandise a trade mark which should prove to be an imitation of the trade mark legally registered, in such a way that it may be mistaken at first sight for the legal trade mark, and when only by means of a thorough examination can one be distinguished from the other.

The same penalty shall be imposed on whosoever applies to his articles or merchandise a trade mark that, though legally registered, is made to appear as being another trade mark, by reason of any addition, subtraction, or modification.

ART. 19. Whosoever, without being the author of the acts or deeds enumerated in the preceding article, fraudulently sells, offers for sale, or puts in circulation, articles or merchandise marked in the manner stated in the same article, shall be punished with imprisonment and fine, or with either of these penalties, at the discretion of the judge.

ART. 20. Whoever, without committing any of the offenses stated in the two preceding articles, should use a trade mark, which either by its simple appearance or by virtue of the in-

scriptions or remarks accompanying the same, might cause the public to make an error concerning the origin of the articles whereon said trade mark had been applied, shall incur the penalty of imprisonment of one or two years, and a fine of from 100 to 2,000 pesos, at the discretion of the judge.

ART. 21. He who fraudulently sells, offers for sale, or puts in circulation, articles bearing a trade mark possessing the irregularities stated in the foregoing article, shall be punished with imprisonment and fine, or with either of these penalties, at the discretion of the judge.

ART. 25. Whosoever should put on a trade mark the statement that the same is registered at the Patent and Trade Mark Office, without it being actually so registered, shall incur imprisonment and a fine, or either one of these penalties, at the discretion of the judge.

ART. 26.—In case an offense should be repeated, the first time said repetition takes place the prescribed penalties for such offense shall be increased by one-half, and upon every repetition said penalty shall be successively increased by one-half.

A repeater is anyone who has committed the new offense of which he is accused before five years shall have elapsed since the final decision which declared him guilty of any of the offenses mentioned by this law, even though the previous offenses had relation to another patent different from that to which the new infringement or offense refers.

ART. 27. Printers, lithographers, etc., who make counterfeit trade marks which are improperly used, and whosoever sells, offers for sale, or puts them in circulation, shall be regarded as joint authors or accomplices, etc., as the case may be, in accordance with their respective responsibility, determined in accordance with the principles and provisions established by the Penal Code of the Federal District.

ART. 28. It shall be the duty of the Public Prosecutor and of every person who considers himself injured to bring an action in order to prosecute the person or persons guilty of the offenses specified in the foregoing articles, and once the action is commenced it shall be officially continued by all means.

#### *Procedure to Be Followed in Criminal Actions.*

ART. 66. Criminal actions brought in accordance with the present law, if they are brought before the Federal judges, whenever they have jurisdiction, shall be discussed as other criminal actions are discussed at present, until the Code of Federal Procedure on Criminal Practice is issued.

ART. 67. When the same actions have to be brought before the local judges of the Federal district of the States or Territories, in accordance with Article 97 of the Constitution and

the present law, the procedure shall be that which is in force in accordance with the laws of each of said States or Territories.

ART. 68. The civil action incidental to the criminal action established by this law may be conducted at the same time and before the same court which takes cognizance of the criminal action; but if the civil action should reach the stage of a decision before the criminal action is finished, the civil case shall be suspended until the criminal action is in the same stage, in order that both actions may be disposed of in the same decision.

ART. 69. If the civil action is not ready for decision and, consequently, would not be decided at the same time as the criminal action, the judge of the civil court selected by the plaintiff shall afterwards take cognizance thereof, unless the judge who had taken cognizance of the criminal action exercises a combined jurisdiction.

ART. 70. The civil action shall be commenced and continued separately before the proper court:

- I. Whenever an irrevocable decision has been rendered in the criminal action without having commenced in due time the civil action in the criminal proceedings.

II. Whenever the defendant has died before instituting the criminal action.

III. Whenever the criminal action has expired by limitation and the civil action is still in existence.

ART. 71. Whenever the interested party has initiated the action on account of a civil responsibility in the criminal action, the question shall be discussed in accordance with Articles 47 and the following ones.

ART. 72. If the criminal action is brought before the local courts, the question concerning civil responsibility shall be discussed as provided for in the respective local law.

#### *Commercial Names and Advertisements.*

ART. 73. The owner of a commercial name has the exclusive right to use it without registration or any other requisite whatever; and in order to exercise this right he shall be entitled to bring a civil action against whosoever usurps or imitates said right, in order to stop the usurpation or imitation, and to demand the payment of losses and damages, and to bring a criminal action in order that the guilty party be punished.

ART. 74. Notwithstanding the provisions of the foregoing article, every merchant, whether native or foreign, has the right to have his commercial name published in the "Official Gazette of Patents and Trade Marks;" in order to obtain the preroga-

tive or privilege prescribed in Article 77. In order to retain this prerogative it shall be necessary to renew the publication every ten years.

ART. 75. Whoever should in any way use a commercial name which does not belong to him, shall be subject to imprisonment and fine or to one of these penalties, at the discretion of the judge.

*The Rights of a Prior User.*

In the First District Court of Mexico, under date of April 3, 1907, a decision was awarded in a suit brought for the cancellation of the registration of a trade mark, which decision is of the utmost importance as a precedent for the protection of trade mark owners who may suffer in that republic from the wrongful appropriation of their mark. It appears that Eduardo Noriega & Co. had for some years used in Mexico a trade mark "Casino" for chocolate, but had neglected to register it. One Gallastegui having registered the mark as his own, the Company thereafter proceeded to register it in its own behalf and then brought a suit to have the registration of Gallastegui pronounced void, upon the ground of its prior use thereof in Mexico.

Considering the question, the court said that the point to be decided rested upon the construction of Article 15 of the trade mark law now in force, which provides that the registration of a trade mark shall be void when the mark has been already registered previously by another, if the registration was made more than two years before, or if it was made with better right. The phrase "with better right," the court said, referred simply to priority of use. From this provision, it was evident that, if a second registration of the mark was made within two years of the first registration, the question of the superior right of the earlier registrant to the mark was open to litigation; whereas, if the second registration had not been made until more than two years after the earlier registration, the later registrant was precluded from attacking the earlier registration, whether rightly or wrongly made in the first instance. Thus the remedy of one whose mark, long used and well known in Mexico, but not registered, had been misappropriated by another, is to himself register his mark in Mexico within two years of the wrongful registration thereof, and then bring a suit to establish his rights. Until he has first registered, he has no standing to assert his rights, nor can he acquire a standing to do so after the lapse of two years from the date of the wrongful registration. Within the period of two years, the registration is, as the court expressed it, "simply a presumptive evidence of title, declarative and not attributive of property." In contemplation of the Mexican law, the owner of a trade mark is he who first invented and then used it, and within the two years period, registration,

the court said, is simply to notify the public of its appropriation by the party for his products, as well as to afford prima facie evidence of priority of use and ownership. With the lapse of the two years period the registration becomes conclusive in favor of any registrant.

It appearing from the proofs that the plaintiff in the case had made use of the mark since the year 1897 and had sold the product in Mexico very extensively and without interruption during the subsequent years and prior to any use thereof by the defendant, it was decreed that the defendant's registration of the mark be cancelled. (*Gaceta Oficial*, 1907, p. 199.)

Attention is particularly called to Article 15 of the law, which permits the cancellation of a registration within two years by one having a better right to the mark, but making registration conclusive if not attacked within two years. The law gives no definition of the term "better right," but the term does not mean mere priority of use. Moreover, the Mexican office makes no search of prior registrations, to determine whether the mark has been previously registered by any other person, requiring the party whose trade mark, although registered in his own name, has later been registered in the name of another, to resort to an action for cancellation in order to clear the records. As is pointed out, the proper solution of the difficulty is to make prior use of the mark in Mexico or abroad the test of better right, whether the mark has been registered or not by the prior user. The law of marks as it stands at present is characterized as a measure which has opened wide the doors to the practice of fraud. Many merchants have established a lucrative business in ascertaining the trade marks whose proprietors have neglected to register them in Mexico and registering them in their own names, later offering to sell the marks to the proper owners thereof, threatening to prevent the sale of the goods unless an exorbitant sum is paid.

There seems to be a difference in the views of Mexican lawyers as to what the remedies are that are available to the rightful owners of trade marks in such cases of wrongful registration. One view is based upon paragraph 15 of the law, which is as follows:

"The registration of a mark is void when it has been made in violation of the provisions of this law and of the regulations relating thereto, or when the mark has been previously registered by another, if this registration has stood for more than two years, or if having stood for less than two years, it was made with a better right."

The implication to be derived from this paragraph is that

after two years the registration, however wrongful at the beginning, becomes unassailable.

A different opinion ascribed to Lic. W. V. Backus is based upon the penal provisions in Art. 20 of the law, as follows:

"He who makes use of a mark which, either by reason of its appearance simply, or by reason of the inscriptions or names contained thereon, may cause the public to be misled as to the source of the goods to which said mark has been applied, will be punished with one or two years imprisonment and a fine of from one hundred to two thousand pesos or with either of these penalties at the discretion of the judge."

In the view of Mr. Backus, this paragraph effectually nullifies any attempt to make commercial use of a trade mark stolen from another. As we understand his view, it is that, whether or not the rightful owner of the trade mark which has been wrongfully registered by another, may or may not retain the right, after two years, to have the registration cancelled, he nevertheless retains the right to punish in a penal proceeding the commercial use of his mark by the registrant thereof, acting under the authority of Sec. 20 above quoted, the theory being that, the mark having become known as identifying the goods of him who first used it and gave it currency, its use by another is misleading and criminal. He believes that the law would not be construed by the court in favor of conscienceless marauders and against the commercial interests of Mexico herself, but that this provision of the penal code would be found broad enough to cover the cases of those who seek to commit larceny under forms of law.

#### *Decisions.*

William Underwood & Co. of Boston, the well known manufacturers of deviled ham sold under that name, in conjunction with the representation of a devil in red as a trade-mark, had occasion to try in Mexico the question of their rights, against a party there who was using a mark practically identical, upon the same class of goods. This mark, it appeared, the company had used in the United States for forty years and had been shipping its goods to Mexico under that mark for more than twenty years. The mark had never been registered in Mexico, although it was the only mark which the Underwood Co. had put upon its products for the Mexican trade during that period.

In the year 1903, just prior to the time when the last trade mark law of Mexico became effective, the defendant presented an application for the registration of a trade mark in Mexico, which consisted of the representation in red and black of a devil without any additional matter, which mark he had registered for deviled ham of his own production. This mark being registered in favor of the defendant, he thereupon, began to use the mark upon his products, but not in the form in which it was registered,

uniting the figure in red with the words "original deviled ham" in English, placing the words in exactly the same arrangement as the plaintiff used upon its labels and otherwise imitating them. Thereby the defendant misled the Mexican trade, taking away a large part of the plaintiff's custom and, as his product was inferior to the plaintiff's, causing damage to the reputation of the plaintiff's goods.

Under the law at that time in force, it was provided that he who had first made lawful use of a mark was the only one who could claim property rights therein or procure the registration thereof, and that where a mark had been registered contrary to the provisions of the law, it might be judicially declared void at the suit of any interested party. The proceedings of Messrs. Underwood & Co. were instituted upon the theory that the law of 1889, under which the registration of the defendant was made, was still in force so far as concerned marks registered under it, and that under the provisions of that law, as previously stated, no difficulty would be experienced by them in asserting their rights. The defendant, on the other hand, contended that the plaintiff was not an interested party under the provisions of the statute, for the reason that their testimony showed that the company had never themselves sold their products in Mexico, but had simply sold it in the United States to customers in Mexico and imported it into Mexico upon sales made in the United States. This, it was argued, and it was so held by the court, did not constitute use of the mark in Mexico by Underwood & Co., that the use of the mark, if any, in Mexico was by the customers of William Underwood & Co. and not by the company itself. Upon these grounds the court held that the plaintiff had no cause of action for infringement of its trade mark and dismissed the case with costs against the plaintiff. (*Gaceta Oficial*, 1907, p. 201.)

#### *Marking of Labels.*

Article 9 of the present Mexican trade mark law provides that all registered marks shall in use be accompanied with the inscription "Marca Industrial Registrada" or *Marca de Comercio Registrada*, according as it is the mark of a manufacturer or of a merchant, either written out in full or abbreviated, together with the number and date of registration in Mexico.

A prominent American firm which had recently brought a suit in Mexico for the infringement of its mark was confronted by the infringer with the defense that the plaintiff had not complied with the law by marking his labels as above required. The defense was held good, and the plaintiff was non-suited.

We are informed upon competent authority that in the case



of a foreign trade mark if registered first in its country of origin and if that country is a party to the International Convention, the filing of a certified copy of the foreign registration upon the application to register in Mexico will relieve the applicant of the requirement so to mark his labels after registration. It is said that the Mexican Government construes Art. 6 of this Convention which provides that any mark registered in the country of origin shall be protected in all countries of the Union as it is at home, to require a waiver of the peculiar requirement of its statute in this particular so far as concerns foreign trade marks, the prior registration of which in the country of origin is thus evidenced.

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## MONTENEGRO

Montenegro, in the Balkan Peninsula, has a territory of about 3,630 English square miles and a population estimated at 260,000. The entire population is engaged in agriculture.

The imports consist of cotton, woolen goods, iron and other metals, colonials and ironmongery. The only government monopolies are salt and tobacco. There is a steady development in agriculture, commerce and industry. There is a through trade with North Albania and Old Servia.

**MONEY**—The Austrian Krone=100 Heller of the nominal value of 10d.=20 cents U. S.

**WEIGHTS AND MEASURES**—The metric system.

Merchandise marks and commercial names may be protected in Montenegro. There is no special law as yet providing for registration, protection being secured by filing a petition addressed to the King and Council of State, which when approved results in the issuance of an edict granting the exclusive right to the use of the mark or name described in the petition.

The duration of protection, and the conditions upon which the protection is granted, rests in the discretion of the King, who fixes the same in the edict.

The counterfeiting of marks, the false use of trade names and marks, false indications of origin, etc., may also be punished in the discretion of the King.

Treaties arranging for the reciprocal protection of industrial property have been concluded between Montenegro and Great Britain, France and Italy.

### *Documents Required to Obtain Protection of Mark.*

- (1) Power of attorney, signed by applicant and legalized by a Russian consul.
- (2) Description of mark, with a statement showing the man-

ner of its employment, and stating the full name, address and occupation of the applicant.

- (3) Wood-cut or electrotype of the mark.
- (4) Six facsimiles of the mark.

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## MOROCCO

The boundaries of this State being undetermined, its area cannot be given, but it is usually estimated at 219,000 square miles. The population is stated at 6,000,000. Fez, the capital, has about 100,000 inhabitants.

The principal ports are Tangier and Casablanca (Dar-al-Baida), and others, Laraiche, Rabat, Mazagan, Saffi, Mogador and Tetuan.

The country has no factories; its industries are pastoral and agricultural.

The principal articles of import are tissues, sugar and tea, raw silks, woollens and iron goods.

The leather industry is very extensive, and largely represented in the making of saddles and purses.

Trade marks being unknown to native manufacturers, no Moroccan laws or regulations have ever been made with respect to them. The Moroccan government engages to protect trade marks affixed to foreign goods to the extent that if a Moroccan merchant should counterfeit the said trade marks, or cause them to be counterfeited, goods found to bear such false marks shall be confiscated for the benefit of the Moroccan government, and the author of the falsification shall be severely punished.

With regard to the protection of foreign trade marks against infringement by foreigners in Morocco, the foreigners in Morocco are amenable solely to the jurisdiction of the Tribunals of their respective countries and subject only to their laws.

By virtue of agreement entered into between the legations, trade marks in Morocco are protected against the subjects of those countries who could be prosecuted in their respective Consular Courts for infringement of such trade marks.

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## NATAL

The area of this colony is about 36,000 square miles and the population in 1911 was estimated at 1,600,000.

The staple products of the coast districts are sugar, coffee, arrowroot, pepper, and tobacco; the banana, pineapple and most tropical fruits flourish under cultivation, and the other parts

of the country are devoted to the growth of cereals and the breeding of horses, horned cattle and sheep. Tea is also grown.

The black wattle bark industry is now a flourishing one. The imports consist chiefly of apparel, haberdashery, flour and grain, leather goods, ironware, machinery; also wines, spirits, etc.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

#### *Law.*

Law to establish a Register of Trade Marks, No. 4 of 1885.

#### *Rules.*

Government Notices Nos. 704, 1898; 433, 1901; 697, 1903.

#### *Duration.*

Trade marks can be registered in perpetuity subject to the payment of a renewal fee before the expiration of each 14 years.

Where the renewal fee has not been paid within three months after the expiration of the period of protection it is removed from the Register, but may be restored by the comptroller upon the payment of the prescribed additional fee.

The original certificate of registration should be produced when paying renewal fees.

#### *What May Be Registered.*

A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner.

A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark.

A distinctive device, mark, brand, heading, label, ticket, or fancy word or words, not in common use.

There may be added to any one or more of these particulars, any letters, words, or figures, or combination of letters, words or figures, or any of them.

It will be noted that the above definition of a trade mark capable of being registered is not as full or as wide as a definition of a trade mark in the other South African Colonies. This may be due to the fact that no alteration in the Natal Law has taken place during the last twenty years, whilst there has been recent legislation in the other Colonies.

#### *Series of Marks.*

When a person, claiming to be the proprietor of several trade marks, which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) The statement of the goods for which they are respectively used, or proposed to be used; or

(b) Statements of numbers; or  
 (c) Statements of price; or  
 (d) Statements of quality; or  
 (e) Statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole; but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

*Mode of Application and Documents Required.*

In order to obtain registration of a trade mark the only document required to be filed with the Comptroller is an application form.

Where the applicant is a firm the application must be signed by a partner of the firm, who should add the words "a member of the firm" after his signature, and, in the case of a Company, by the Secretary or other proper officer, who should add after his signature "For the Company."

It is essential that the full names of all the members of the firm should be given in the application form.

The application form must be signed by the applicant himself, and *cannot* be signed by an agent acting under a power of attorney, and, although a power of attorney is not necessary to enable the agent to make an application for registration of a trade mark, one should be sent for use in case of need.

The Comptroller is guided to a large extent by British precedent, where applicable, although it does not necessarily follow that because a mark has been registered in Great Britain that it will pass unchallenged in this Colony.

No mark will be accepted for registration unless consisting of or containing one or more of the above essentials. The Comptroller may, if he thinks fit, refuse to register a trade mark; such refusal is, however, subject to appeal to the Governor in Council, who may, if he thinks fit, hear the applicant and the Comptroller.

The registration of a trade mark is deemed to be equivalent to the public use of the trade mark.

A trade mark may be registered in any color, and such registration shall, subject to the provisions of the law, confer upon the registered owner the exclusive right to use the same in that or any other color.

The period to effect the registration of a trade mark and obtain certificate of registration is about five weeks from the time the papers are filed with the Comptroller.

Where the registration of a trade mark has not been, or shall not be, completed within twelve months from the date of the ap-

plication, by reason of default on the part of the applicant, the application shall be deemed to be abandoned.

As the application has to be advertised it is recommended that the electrotype or block should be as small as possible, consistent with clearness, in order to reduce the cost of advertising. Special care should be taken to see that the electrotype or block sent will print clearly. Half-tone blocks are not accepted.

#### *Assignments.*

A trade mark, when registered, shall be assigned and transmitted *only* in connection with the good will of the business concerned in the particular goods or classes of goods for which it has been registered and shall be determinable with that good will. Certificate of registration should be produced when registering an assignment.

Where a person becomes entitled to a registered trade mark by assignment or otherwise a request for the entry of his name in the register as proprietor of the trade mark shall be addressed to the Comptroller, Registrar's Office.

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## NETHERLANDS (HOLLAND)

This kingdom has an area of 12,650 square miles, and a population in 1911 estimated at 5,900,000. Its extent from north to south is about 160 miles, and from east to west about 100 miles.

Holland is above all things a commercial country and derives its principal importance from trade with its eastern possessions and with foreign nations. It is, however, mainly as an outlet and inlet for the trade of northern Europe that its importance at present consists.

The imports consist principally of grain, Indian corn, beans, peas, rice, brans, flour, groundnuts, palmnuts, seeds, feeding cakes, oils, cottonseed, sesame, petroleum, fish, meat, tallow, lard, margarine (raw), salt, syrup, molasses, sugar, tobacco, cigars, tea, coffee, spices, wines, spirits, beers, malt extract, mineral waters, ores, metals, engines, wood and timber, drugs, dye stuffs, chemicals, etc.

MONEY—The guilder (100 cents)=1s. 8d.=40 cents U. S.

WEIGHTS AND MEASURES—The metric system.

#### *Law.*

Law of September 30, 1893 relating to the registration of designs and trade marks as amended by the Law of December 30, 1904.

*Terms.*

Registration lasts for twenty years. This period can be prolonged for further periods of twenty years, provided the prolongation is applied for before the expiration of twenty years. In such cases the same formalities must be observed as at the first registration.

*Renewal.*

The registration of trade marks must be renewed before the expiration of twenty years. The duration of the protection of all trade marks registered before the 1st of December, 1893 is extended from fifteen to twenty years.

The duration is reckoned from the final registration, and all trade marks which have been registered under the Laws of 1880 and 1885 are subject to the provisions of the Law of September 30, 1893, and also to those of the Amending Law of December 30, 1904.

In view of the renewals which are constantly being dealt with in the Industrial Property Office, and especially in view of the circumstance that in many cases it is necessary to first transfer a trade mark to the new proprietor where a change has taken place in ownership of the mark, we recommend not to delay the renewal until the last moment.

In every case in which the business of the original applicant has been transferred to another person or firm or has been converted into a limited, liability company, the renewal cannot be effected until the transfer of the trade mark has been entered in the register.

An extension of the classes of goods for which the mark has originally been registered, is not admissible in the case of renewal, and the mark which is to be renewed must agree exactly with the mark originally registered.

The certificate of renewal is issued within three weeks, as in the case of a first registration and the renewed registration receives a fresh number. The renewal is published in the first number of the Patent and Trade Mark Journal of the next following month.

*Who May Apply.*

Until proof be produced to the contrary, the person who first makes application for the registration of his trade mark will be considered to have first made use of it.

The following cannot be registered as trade marks:

Marks containing obscene words or figures, or such as would be contrary to laws. Those containing, even though with a slight alteration, the national coat of arms, nor those of any province or community or any other public corporation.

If the trade mark sent for registration is identical with or closely resembles a trade mark already registered for the same goods under the name of another, or has previously been sent by another, or if it is contrary to aforesaid provisions, the registration may be refused.

#### *Priority.*

The right to the exclusive use of a trade mark for distinguishing the products of industry or of commerce, of one person from those of others, appertains to him who, in the Kingdom in Europe or in the colonies or possessions in other parts of the world, shall have first made use of the mark for the purpose indicated, but only as regards the kind of goods for which the trade mark shall have been employed and during a duration not exceeding three years after the last use that has been made of it.

#### *Requirements for Registration.*

The following particulars should be sent to the Bureau of Industrial Property by any person requiring the registration of a trade mark:

1. Power of attorney.
2. Application for registration with name in full, address, business and nationality of the applicant and the species of goods for which the applicant desires the trade mark to be registered.
3. A full description of the trade mark.
4. Six copies of the trade mark, two of them to be signed by the applicant. If in the description the color of the trade mark is mentioned as distinctive character, then at least ten copies of the trade mark must be produced.
5. An electrotype of the trade mark not less than 1.5 cm. and not exceeding 10 cm. in length and breadth and 2.4 cm. in depth.

(Forms for application may be obtained from B Singer's Offices.)

#### *Formalities.*

If the registration of a trade mark has been refused, the applicant may, within one month, appeal against such refusal to the Court of Justice (Arrondissements-Rechtbank) at The Hague with a view to having the registration ordered.

#### *Appeals.*

When a registered trade mark is identical with or nearly resembles that to which for the same species of goods another person has a right, because of having first made use of it or when the trade mark contains the name of the individual or firm to which another has the right, he who claims such a right, is empowered within six months to appeal to the Court of Justice

(Arrondissements-Rechtbank) at The Hague with a view to having the registration declared null and void. Even after the expiration of this term of six months the claimant may request that the registration be declared null and void provided that his right is established by decree of a Court of Justice.

An appeal against the decision of the Court of Justice at The Hague may be made to the Court of Appeals in the same place within a period of one month from the date of such decision.

An appeal against the decision of the Court of Appeals may be sent to the High Court of Netherlands (Hoogen Raad), within a period of one month from the date of such decision.

#### *Application Under Convention.*

A subject of one of the States adhering to the International Convention may, in registering his trade mark in the Netherlands claim priority of four months from the date of registration of his mark in one of the other States, a member of the Convention. It is sufficient to state the number and date of the registration in the home country, in making such application, an official certificate, therefore, not being required.

A priority may be claimed as well by a subject of one of the States adhering to the International Convention for the registration in the Netherlands of trade marks which are used on exhibitions, officially sanctioned in one of the States, this priority being six months after the opening of said exhibitions.

#### *Assignments.*

For the entry of the transfer of a trade mark in the Trade Marks Register, it is absolutely necessary that the good will and business of the original proprietor of the trade mark shall also have been assigned to the subsequent proprietor.

Requirements: (a) A power of attorney to be signed by the new proprietor (no legalization). The form of power of attorney for registrations may also be used for transfers. (b) A copy of the deed of assignment of the business to the new proprietor, or an extract from the said deed, showing clearly that the trade mark has been assigned, together with the good will and the business. This document must be executed before a notary and *legalized* before a Dutch consul; it is *not* returned.

If in the copy of the deed of assignment or of the extract from same, it is not particularly mentioned that the trade marks have been assigned together with the good will and business, the power of attorney must be signed by the original proprietor of the mark as well.

In cases where a deed of assignment does not exist or cannot be procured, the Registrar contents himself in some cases with a declaration of a notary or with a declaration signed by the



original proprietor of the mark to the effect that a deed of assignment does not exist and in which must furthermore be declared that the good will and business, as well as the mark or marks, have been assigned to the subsequent proprietor. Such declaration must be legalized by a Dutch consul, and if possible, the power of attorney should be signed by *both* parties.

A deed of assignment, an extract from same, and declarations of the kind above referred to are accepted by the Industrial Property Office in the English, French or German language, no translation in Dutch being required.

It is advisable to file the original certificate of registration together with the required documents.

A certificate of the transfer is issued in about three weeks, and the transfer is published in the first number of the Patent and Trade Mark Journal of the next following month.

A mere change in the name of the proprietor of the trade mark can only be recorded in the Trade Marks Register by payment of the same government fees and by fulfilling the same formalities as for the transfer of a trade mark.

For this purpose is required:

(a) Power of attorney (no legalization).

(b) An extract from the Commercial Register or Trade Register of Firms, showing that the change in the name has been officially recorded. This document must be legalized by a Dutch Consul.

#### *Fees.*

On filing a trade mark the sum of 10 guilders must be paid for each mark; this sum will, in no case, be returned.

#### *Classification.*

Classes of goods which necessitate registration in each class separately, do not exist in the Netherlands. It is therefore possible to register a mark for a great number of goods by one single application, but it is advisable to divide them into groups so as to obtain the protection as broad as possible. A mark can only be registered in respect of the goods for which it is practically used and not for all other goods for which the applicant might intend to use it later. If applicant's name, his occupation or any printing on the mark gives rise to the supposition that applicant does not deal in all the goods mentioned in the application, the Registrar will refuse registration for those goods that do not fall under applicant's business; unless applicant can prove that he in fact deals in same.

Should, however, a trade mark contain any indication with respect to the goods for which it is used, registration for all other goods is not admissible.

Registration can either be obtained for butter or margarine, but not for both together.

*Word Marks.*

Trade marks which consist of words, single letters, numbers or historical names may be registered in the Netherlands, provided that they are not of a descriptive character, and do not consist of designations of goods which are in general use in the trade or which are contained in the Dutch Pharmacopœia.

*Name of Another Person.*

The name of a third person can only be registered as a trade mark if a declaration of consent of the said third person or of his heirs be furnished. This document must be legalized by a Dutch consul. The same requirement applies to cases where a pictorial representation contains such a name.

*Marking Goods.*

“Gedeponoord Fabrieksmerk” for industrial marks; “Gedeponoord Handelsmerk” for commercial marks; “Wettig Gedeponoord” (most generally used—registered in accordance with the Act).

*Laws in Force in the Netherlands to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The law prohibits the importation, sale or offering for sale in the European territory of the Netherlands of goods falsely marked with another’s trade name or mark or an imitation thereof, as well as of goods falsely bearing the name of any locality as indication of the place of origin, when such indication is associated with a trade name of a fictitious character.

*Annulment.*

An objection against the registration of a trade mark can only be prosecuted by way of a petition for annulment and that such petition must be lodged within six months from the date of publication of the registration before the “Arrondissements-Rechtbank” at The Hague, and not before the Industrial Property Office.

Grounds for annulment are:

(a) That the registered mark is completely or mainly similar to a mark to which another person has a right for the same class of goods on account of “first use” in this country;

(b) That the registered mark contains the name or the trading style of another person.

Petitions for annulment of internationally registered trade marks, as far as the entry in the Register of Holland of said registrations is concerned, may be based on the same aforementioned grounds and can be lodged within nine months from said entry.

- *Infringement.*

Persons imitating registered trade marks or persons who use fraudulent trade marks in connection with goods may be prosecuted either in civil or in criminal courts.

An infringer who is condemned in the courts may be punished either by fine or imprisonment.

In a case of a civil action (for damages) the amount of the damages is to be fixed by the court.

DECISIONS.

*Right of Priority.*

Under the law of the Netherlands, the right to protection depends upon priority of use of a trade mark in that country or its colonies. Accordingly, the registration of a trade mark by any other than the first user does not cut off the latter's rights, but they may be enforced upon proof of prior use by him. The registration is merely prima facie evidence that the registrant was the first user of the mark. Within six months after the registration of a mark to which another claims a prior right, the claimant may appeal to the Court of Justice at The Hague, with a view to having the registration declared void. After the expiration of the term of six months, the claimant may still apply for the cancellation of the mark, but he must first have his prior right to the mark adjudicated by a court in an independent proceeding.

It has been held by the above mentioned court, under date of June 10, 1898, that under Section 2 of the International Convention, the subjects or citizens of another country, a member of the Convention, have the same rights in this respect as a native. In the case in controversy, the former agent of an English firm had registered the mark of his principal, but the registration was declared void and ordered by the court to be cancelled.

*Word Marks.*

The Supreme Court of the Netherlands in a more recent decision has held that the law protects the word, not only in the particular form in which it is registered, but in any form. It results from the origin and the meaning of the Dutch trade mark law, that a word, regardless of its use in any particular form, can distinguish the goods to which it is applied from others of a different origin; and that the law protects such a word mark, irrespective of the form in which it is used.

*The Right to a Firm Name.*

As the law of the Netherlands makes no special provision for the protection of firm names, it has become the custom among manufacturers and traders to register their firm name as a trade mark under the trade mark law. The extent of the protection obtained by such registration has lately been the subject of judicial decision, and the prudence of such registration has been vindicated.

The case had to do with the famous medical preparation "Haarlem Oil," familiar to the world during several centuries. The originator of this preparation, was one Claas Tilly, who began to make it toward the end of the seventeenth century. Now that this preparation has become so widely known throughout the world, various firms have become engaged in its manufacture and the question of the right to use the name of its discoverer has become to them one of importance. At the present time, there are among others in Netherlands engaged in the manufacture of this preparation, the firm of C. de Koning Tilly, who claims to be a descendant of the original discoverer, and a corporation successor to the firm of G. de Koning Tilly. Inasmuch as the preparation "Haarlem Oil" is always sold under the name of the discoverer "Tilly" the right to use this name especially in the form "de Koning Tilly" is of great practical value.

The first mentioned firm registered under the trade mark law the word trade marks "C. de Koning Tilly's Haarlem Oil" and "de Koning Tilly's Haarlem Oil." Later the corporation registered trade marks under the trade mark law which contained among other features, the name "G. de Koning Tilly." Thereupon the first mentioned firm appealed to the courts for the cancellation of the latter registrations. The corporation defended, upon the ground that it could not be forbidden to use, in a trade mark, the name of its predecessor in business. The court, however, decided that the question of the right to do business with the use of the name "de Koning Tilly" was quite distinct from that of the right to register it as a trade mark. The only matter at issue in the proceedings for cancellation being that of the right to use the name as a trade mark upon goods, the court denied the right so to use the name, holding that by registration, the firm of C. de Koning Tilly had obtained the exclusive right to make use of the name as a trade mark. While the corporation could do business under a corporate name which includes the words "Formerly G. de Koning Tilly," it must not use the words as a trade mark upon its goods.

This decision indicates the importance, under the law of the Netherlands, of registering the firm or trade name as a trade mark, inasmuch as the exclusive right to the use of that name

is evidently secured thereby to the registrant. Thus an apparent defect of protection to trade names in the law of the Netherlands is in a measure supplied.

*Right to a Name in the Netherlands.*

Three late decisions of the courts of Rotterdam and Amsterdam, relative to that aspect of unfair competition which consists in the unauthorized use of a name, already in use by another in the like business, are of much interest and importance to foreign traders in that country. In the two cases decided by the Rotterdam court, the plaintiffs were respectively English and American firms, the defendants Dutch. The names in dispute were "Singer" for sewing machines, and "Gramophone & Typewriter Ltd." In each of these cases, judgment was given for the defendant, upon the ground that the Dutch law recognizes no absolute right in a name. The Amsterdam court, on the other hand, held that article eight of the Paris convention was applicable, which required that the commercial name be protected in all the countries of the union, without the necessity of registration. Accordingly, the use of the name "Bock & Co." by a Dutch firm upon cigars was such unfair competition toward the English owner of the name as required the intervention of the court for its suppression. (Markenschutz und Wettbewerb, 1910, p. 275.)

*The Singer Trade Name.*

The high court of the Netherlands has defined the character of the protection accorded in that country to trade names, and specifically has passed upon the status of the trade name "Singer" as applied to sewing machines. The Singer Manufacturing Company proceeded against a competing firm, for selling machines not of the plaintiffs' manufacture under the name of "Singer." The defendant maintained that the name as applied to sewing machines had become a generic term.

The controversy having reached the high court, this tribunal holds that, generally speaking, there is no right to a firm name as such in the Netherlands; that accordingly, it is not a violation of the rights of a corporation to make use of a firm name employed by it. The only way in which a firm name can be protected in the Netherlands is to register it as a trade mark; then it becomes entitled to protection as such, and the registrant may prevent any other from making use thereof. This right can be lost only in the manner fixed by the statute. The word remains a valid trade mark, in contemplation of law, even though, with the lapse of time, it may become, in the minds of the public, a generic term. A mark once registered and protected can not become in law a generic term by mere length of use.

*Trade Names.*

The Supreme Court of the Netherlands has rendered a decision relative to the application of a German firm for registration in that country. The firm of Friedrich Herter Abr. Sohn attempted to register the name of their firm with the words "De Echte Herter," that is "The Genuine Herter." This registration was refused by the court and its rejection sustained by the Court of Appeals and subsequently by the Supreme Court, upon the ground that the registration of the words "De Echte Herter" would not only be an official acknowledgment of the standing of the firm, but would stigmatize the other numerous firms of the same name in Germany as imitators and counterfeiters. It was held, therefore, that the registration of the mark would be contrary to public order and in violation of the trade mark law of the country.

*Registration of Trade Mark by an Agent.*

A very interesting decision of the Bureau of Industrial Property of the Netherlands has been rendered. The resident agent of an English firm undertook to register in that country, as a trade mark, the name of his principal. In support of his application, he submitted to the office an agreement between himself and the principal, wherein it was provided that the trade mark should be registered in the Netherlands and her colonies in the name of the agent, but the agent bound himself to transfer the rights acquired by such registration to the owners, upon the expiration of the agreement between the parties, or in case the relation between them should be otherwise terminated. Notwithstanding the terms of the agreement, the office refused to register the mark in the name of the agent, holding that once it was registered by the agent, his principal, in spite of the agreement, was without recourse to compel the agent to fulfill its terms and transfer the mark to him. The only remedy that the principal would have would be an action for damages against the agent, to indemnify him for the breach of the contract, but he could never compel the cancellation of the registered mark.

Assuming the position taken by the Bureau to be correct, to-wit: That notwithstanding the agreement, the principal would not enjoy the remedies which he supposed, but would be powerless to recover his mark after its registration, the decision displays a commendable foresight on the part of the Bureau in protecting the interest of the foreign house against the possible disloyalty of its agent. The decision has a valuable moral for the American owners of trade marks, who frequently rely upon agreements of this kind for their protection in foreign countries, allowing their agents under such agreements to register the marks in their own name. Certainly in the light of this decision,

that course should never be taken, unless it has first been ascertained that the agreement by the agent to assign the mark upon demand, is one that can be enforced. Even then the owner should not lose sight of the fact that the enforcement of such agreement, against an unwilling agent is always a matter involving large expense and considerable trouble.

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## NEWFOUNDLAND

The island of Newfoundland is a self-governing colony distinct from the Dominion of Canada. The estimated area of the island is 42,700 square miles. Labrador has an area of about 120,000 square miles. The population in 1911 was estimated at 238,700; Labrador, 5,000. The government which extends over the territory of Labrador, is carried on by a governor, assisted by an executive council of 9 members, a legislative council of 18 members and a house of assembly of 36 members.

MONEY—1 dollar (100 cents)=4s. 2d.=1 dollar U. S.

WEIGHTS AND MEASURES—Same as Great Britain.

### *Law.*

Chapter 112.

### *Duration.*

Indefinite.

### *Requirements.*

Power of attorney; declaration, legalized by British Consul and six copies of the mark.

### *What May Be Registered.*

(1) For the purposes of this chapter, a trade mark must consist of or contain at least one of the following essential particulars:

(a) A name of an individual or firm printed, impressed or woven in some particular or distinctive manner; or (b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or (c) A distinctive device, mark, brand, heading, label or ticket; or (d) An invented word or invented words; or (e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2) There may be added to any one or more of the essential particulars mentioned in this section, any letters, words or figures, or of any of them; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application

any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3) Provided as follows: (a) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business; but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;

(b) Any special and distinctive word or words, letter, figure or combination of letters or figures, or of letters and figures used as a trade mark before the coming into force of these Consolidated Statutes, may be registered as a trade mark under this chapter. (Art. 20.)

A trade mark must be registered for particular goods or classes of goods. (Art. 21.)

#### *Assignment.*

Every trade mark duly registered shall be assignable in law, and on the assignment being produced, and the fee hereinbefore prescribed being paid, the Colonial Secretary shall cause the name of the assignee, with the date of the assignment and such other details as he shall see fit, to be entered on the margin of the register of trade marks, on the folio where such trade mark is registered. (Art. 29.)

In practice the assignment should be forwarded in duplicate, one copy to be filed, and one certified and returned.

Where an assignment covers two or more trade marks, three or more duplicate originals should be sent, one for return, and one to file with each trade mark.

#### *Offenses, Penalties and Procedure.*

(1) Every person who—(a) Forges any trade mark; or (b) Falsely applies to goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive; or (c) Makes any die, block, machine or other instrument for the purpose of forging, or of being used for forging, a trade mark; or (d) Applies any false trade description to goods; or (e) Disposes of, or has in his possession, any die, block, machine, or other instrument for the purpose of forging a trade mark; or (f) Causes any of the things above in this section mentioned to be done; shall, subject to the provisions of this chapter, and unless he proves that he acted without intent to defraud, be guilty of any offense against this chapter.

(2) Every person who sells, or exposes for sale, or has in his possession for sale, or for any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark, or mark so nearly resembling a trade mark as to be calculated to deceive, is falsely applied, as the case may be, shall be guilty of an offense



against this chapter, unless he proves—(a) That having taken all reasonable precautions against committing an offense against this chapter, he had, at the time of the commission of the alleged offense, no reason to suspect the genuineness of the trade mark, mark, or trade description; and (b) That on demand made by, or on behalf of the prosecutor, he gave all information in his power with respect to the persons from whom he obtained such goods or things; or (c) That otherwise he had acted innocently.

(3) Every person guilty of an offense against this chapter shall be liable—(a) On conviction on indictment to imprisonment, with or without hard labor, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and (b) On summary conviction to imprisonment, with or without hard labor, for a term not exceeding four months, or to a fine not exceeding \$100; and in the case of a second or subsequent conviction to imprisonment, with or without hard labor, for a term not exceeding six months, or to a fine not exceeding \$200; and (c) In any case, to forfeit to Her Majesty every chattel, article, instrument, or thing, by means of or in relation to which the offense has been committed. (d) The Court before which any person is convicted under this section may order any forfeited articles to be destroyed, or otherwise disposed of, as the Court thinks fit. (e) If any person feels aggrieved by any conviction made by a Court of summary jurisdiction, he may appeal therefrom to the Supreme Court. (f) Any offense for which a person is, under this chapter, liable to punishment on summary conviction, may be prosecuted, and any article liable to be forfeited under this chapter by a Court of summary jurisdiction, may be forfeited; Provided that a person charged with an offense under this section, before a Court of summary jurisdiction, shall on appearing before the Court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires, to be tried accordingly. (Art. 1.)

#### *Fees.*

Before any action is taken in relation to an application for registering a trade mark, the following fees shall be paid to the Colonial Secretary, that is to say:

On every application to register a trade mark, including certificate.....	\$20.00
For the recording of an assignment.....	1.00

Such fees to be paid by the Colonial Secretary to the Receiver General for the use of the colony.

If the Colonial Secretary refuses to register the trade mark for which application is made, the fee shall be returned to the applicant or his agent, less five dollars, which shall be retained as compensation for office expenses.

Marking Goods: "Trade Mark Registered."

## NEW ZEALAND

The Dominion of New Zealand comprises two large islands, known as the North and South Islands, with one of smaller size called Stewart Island. The islands form one extended line for a distance of nearly 1,200 miles; their average breadth is about 120 miles, but no part is anywhere more distant than 75 miles from the coast. There are a number of outlying islands included within the boundaries of the Dominion, the Cathams, Rarotonga and Niue being the most important. Their area is nearly 105,000 square miles, equal to that of Great Britain and Ireland. Population, 1,417,952.

An interesting industry of the country is the collecting of Kauri gum, which is formed of the turpentine that has exuded from the Kauri tree. This gum is found only in the Auckland provincial district and is collected mostly from, or near the surface of the ground, and gives employment to 4,000 or 5,000 people. The gum is used principally in the manufacture of high class varnish.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

### *Laws.*

Trade Mark Act of 1911 went into force on the first day of July, 1912.

### *Duration.*

Fourteen years; renewable every fourteen years.

### *Renewal.*

At any time not less than four months and not more than six months before the expiration of the last registration of a trade mark any person may leave at the Office a fee for the renewal of the registration of the mark upon the form No. 10. Such person shall endorse upon such form his name and address, and before taking any further step the Registrar may require such person to furnish, within such time as he may allow, an authority to pay such fee signed by the registered proprietor, and, if such person does not furnish such authority, may return such fee and treat it as not received.

When he does not require such authority the Registrar shall, upon receipt of such fee, communicate with the registered proprietor at his registered address, stating that the fee has been received and that the registration will in due course be renewed.

At a date not less than three months and not more than four months before the expiration of the last registration of a mark, if no renewal fee has been received as aforesaid, the Registrar

shall send to the registered proprietor at his registered address a notice in the form No. 11.

At a time not less than fourteen days and not more than twenty-eight days before the expiration of the last registration of a mark, the Registrar shall, if no renewal fee has been received, send a notice to the registered proprietor at his registered address in the form No. 12.

If at the date of the expiration of the last registration of a mark the renewal fee has not been paid, the Registrar shall advertise the fact forthwith in the Journal, and if within one month of such advertisement the renewal fee, together with an additional fee of 10s., is received, he may renew the registration without removing the mark from the register.

Where after one month from such advertisement such fees have not been paid, the Registrar may remove the mark from the register as of the date of the expiration of the last registration, but may upon payment of the renewal fee, together with an additional fee of £1, restore the mark to the register if satisfied that it is just so to do, and upon such conditions as he may think fit to impose.

Where a trade mark has been removed from the register the Registrar shall cause to be entered in the register a record of such removal and of the cause thereof.

Upon the renewal of a registration a notice to that effect shall be sent to the registered proprietor at his registered address, and the renewal shall be advertised in the Journal.

#### *Registrable Trade Marks.*

The Registrar may refuse to accept any application upon which the following appear:

(a) The words "Patent," "Patented," or "By Royal Letters Patent," "Registered," "Registered design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is forgery," or words to like effect.

(b) Representations of Their Majesties or of any member of the Royal Family.

(c) The device of the Geneva Red Cross, or of the words "Red Cross."

Representations of the Royal Arms or Royal Crests, or arms or crests so nearly resembling them as to lead to mistake, or of British Royal crowns, or of the British national flags, or of the word "Royal," or any other words, letters, or devices calculated to lead persons to think that the applicant has Royal patronage or authorization, may not appear on trade marks the registration of which is applied for: Provided always that nothing in this regulation shall preclude the Registrar from allowing the registration as an "old mark" (that is, as a mark which was used

by the applicant or his predecessors in business before the 1st of January, 1890) of any mark which was capable of being so registered before the Patents, Designs and Trade Marks Act, 1911, came into operation.

Where representations of the arms of a foreign state or place appear on a mark the Registrar may call for such justification as he may deem necessary for their use.

Where a representation of the arms or emblems of any city, borough, town, place, society, body corporate, or institution appears on a mark, the applicant shall, if so required, furnish the Registrar with a consent from such official as the Registrar may consider entitled to give consent to the use of such arms or emblems.

Where the names or representations of living persons appear on a trade mark, the Registrar shall, if he so requires, be furnished with consents from such persons before proceeding to register the mark. In the case of persons recently dead the Registrar may call for consents from their legal representatives before proceeding with registration of a trade mark on which their names or representations appear.

Where the name or a description of any goods appears on a trade mark the Registrar may refuse to register such mark in respect of any goods other than the goods so named or described.

Where the name or description of any goods appears on a trade mark which name or description in use varies, the Registrar may permit the registration of the mark with the name or description upon it for goods other than those named or described, the applicant stating in his application that the name or description varies.

#### *Application for Registration.*

If application for registration of a trade mark is made by a firm or partnership, it may be signed in the name or for and on behalf of the firm or partnership by any one or more members thereof.

If the application is made by a body corporate, it may be signed by a director or by the secretary or other principal officer of such body corporate.

Any application may be signed by an agent.

On or after receipt of the application the Registrar shall furnish the applicant with an acknowledgment thereof.

The Registrar may allow an application for a trade mark, although not in accordance with the said Act and these regulations, to be left on such terms and conditions as he thinks fit, and in any such case shall require the applicant to comply with the requirements of these regulations within a time to be specified by him in that behalf. No further action need be taken by

the Registrar in respect of that application until the prescribed requirements are complied with.

Where application is made to register a trade mark which was used by the applicant or his predecessors in business before the 1st of January, 1890, the application shall contain a statement of the time during which and by whom it has been used in respect of the goods mentioned in the application. The Registrar may require a statutory declaration verifying such user with exhibits showing the mark as used.

Every application for registration of a trade mark shall contain a representation of the mark affixed to the application, and shall be accompanied by four additional representations of the mark. Where the representations are of such size that they require to be folded they shall be mounted on linen or tracing cloth.

The Registrar, if dissatisfied with any representation of a mark, may at any time require another representation satisfactory to him to be substituted before proceeding with the application.

Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the Registrar thinks most convenient.

The Registrar may also, in exceptional cases, deposit in the Office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he thinks fit.

When application is made for the registration of a series of trade marks a representation of each trade mark of the series shall be affixed, as aforesaid, to the application.

When a trade mark contains a word or words in other than Roman characters, there shall be indorsed on the application a sufficient transliteration and translation to the satisfaction of the Registrar of each of such words, and every such indorsement shall be signed by the applicant or his agent.

Where a trade mark contains a word or words in a language other than English, the Registrar may ask for an exact translation thereof; if he so requires, such translation shall be indorsed and signed as aforesaid.

#### *Procedure.*

Upon receipt of an application for registration the Registrar shall cause a search to be made amongst the registered marks and pending applications for the purpose of ascertaining whether there are on record any marks for the same goods or description of goods identical with the mark applied for, or so nearly resembling it as to be calculated to deceive.

If after such search and a consideration of the application the Registrar thinks there is no objection to the mark being registered, he may accept it absolutely, or subject to conditions,

amendments and modifications which he shall communicate to the applicant in writing.

If after such search and consideration of the application any objections appear, a statement of those objections shall be sent to the applicant in writing, and unless within such time as may be allowed, he takes steps to meet such objections, he shall be deemed to have withdrawn his application.

If the Registrar accepts an application subject to any conditions, amendments or modifications, and the applicant objects to such conditions, amendments or modifications, he shall, within such time as may be allowed, communicate his objections to the Registrar either personally or by letter; and if he does not do so he shall be deemed to have withdrawn his application. If the applicant does not object to such conditions, amendments or modifications he shall forthwith notify the Registrar in writing.

The decision of the Registrar with respect to such objections as aforesaid shall be communicated to the applicant in writing, and if he objects to such decision he may within such time as may be allowed, require the Registrar to state in writing the grounds of his decision and the materials used by him in arriving at the same.

Upon receipt of such request the Registrar shall send to the applicant such statement as aforesaid in writing, and the date when such statement is sent shall be deemed to be the date of the Registrar's decision for the purpose of appeal.

The Registrar may call on an applicant to insert in his application such disclaimer as the Registrar may think fit, in order that the public generally may understand what the applicant's rights, if his mark is registered, will be.

Every application, when accepted, shall be advertised by the Registrar in the Journal during such times and in such manner as the Registrar directs.

If no representation of the trade mark is inserted in connection with the advertisement of an application, the Registrar shall refer in such advertisement to the place or places where a specimen or representation of the trade mark is deposited for exhibition.

For the purposes of such advertisement the applicant may be required to furnish a wood block or electrotype (or more than one if necessary) of the trade mark of such dimensions as may from time to time be directed by the Registrar, or such other information or means of advertising the trade mark as may be required by the Registrar; and the Registrar, if dissatisfied with the block or electrotype furnished by the applicant or his agent, may require a fresh block or electrotype before proceeding with the advertisement.

When an application relates to a series of trade marks differing one from another, the applicant may be required to furnish a

wood block or electrotype (or more than one if necessary) of any or of each of the trade marks constituting the series; or the Registrar may, if he thinks fit, insert with the advertisement of the application a statement of the manner in respect of which the several trade marks differ from one another.

### *Opposition.*

Any person may, within two months from the date of any advertisement in the Journal of an application for registration of a trade mark, give notice in writing at the Office of opposition to the registration.

Such notice shall be in the form No. 4 and shall contain a statement of the grounds upon which the opponent objects to the registration. If registration is opposed on the ground that the mark resembles marks already on the register, the numbers of such marks and the numbers of the Gazettes or Journals in which they have been advertised shall be set out. Such notice shall be accompanied by a duplicate which the Registrar shall forthwith send to the applicant.

Within two months from the receipt of such duplicate the applicant shall send to the Registrar a counter-statement in the form No. 5, setting out the grounds on which he relies as supporting his application. The applicant shall also set out what facts, if any, alleged in the notice of opposition he admits. Such counter-statement shall be accompanied by a duplicate in writing.

Upon receipt of such counter-statement and duplicate the Registrar will forthwith send the duplicate to the opponent, and within one month from the receipt of the duplicate the opponent shall leave at the office such evidence by way of statutory declaration as he may desire to adduce in support of his opposition and shall deliver to the applicant copies thereof.

If an opponent leaves no evidence he shall be deemed to have abandoned his opposition, but if he does, then within one month from the receipt of the copies of declaration the applicant shall leave at the office such evidence by way of statutory declaration as he desires to adduce in support of his application, and shall deliver to the opponent copies thereof.

Within fourteen days from the receipt by the opponent of the copies of the applicant's declaration the opponent may leave at the office evidence by statutory declaration in reply, and shall deliver to the applicant copies thereof. Such evidence shall be confined to matters strictly in reply.

In any proceedings before the Registrar he may at any time, if he thinks fit, give leave to either the applicant or the opponent to file any evidence upon such terms as to costs or otherwise as the Registrar may think fit.

Where there are exhibits to declarations filed in an opposition, copies or impressions of such exhibits shall be sent to the

other party on his request; or, if such copies or impressions can not conveniently be furnished, the originals shall be sent to the office, so that they may be open to inspection. The original exhibits shall be produced at the hearing, unless the Registrar otherwise directs.

Upon completion of the evidence the Registrar shall give notice to the parties of a date when he will hear the arguments in the case.

Such appointment shall be for a date at least three weeks after the date of the notice, unless the parties consent to a shorter notice.

Within seven days from the receipt of such notice both parties shall file an application in the form No. 6. A party who receives such notice and who does not, within seven days from the receipt thereof, give notice on the said form No. 6 that he intends to appear, may be treated as not desiring to be heard, and the Registrar may act accordingly.

The hearing shall be in Wellington, except where the parties intimate to the Registrar, at least fourteen days before the time appointed for the hearing, that it is their desire that it shall be held elsewhere in New Zealand. On receipt of such intimation, and on payment of such sum to cover expenses as he thinks fit, the Registrar may, in his discretion, hear the case at such other place in New Zealand as the parties thereto may mutually desire.

Where in opposition proceedings any extension of time is granted to any party, the Registrar may thereafter, if he thinks fit, without giving the said party a hearing, grant any reasonable extension of time to the other party in which to take any subsequent step.

Where a party giving notice of opposition neither resides nor carries on business in New Zealand, the Registrar may call upon him to give a security, in such form as the Registrar may deem sufficient, for the costs of the proceedings before the Registrar, for such amount as the Registrar thinks fit, and at any stage in such opposition may require further security to be given at any time before giving his decision in the case.

#### *Non-Completion.*

Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar shall give notice to the applicant in writing of such non-completion, and if the applicant has an agent, shall send a duplicate of such notice to such agent. If after fourteen days from the date when such notice was sent the registration is not completed, the application shall be deemed to be abandoned, but the Registrar may with such notice, where the applicant lives at a distance, give a further time after such fourteen days for the completion of such application.



*Convention Applications.*

Every application for the registration of a trade mark (hereinafter referred to as a convention application) shall contain a declaration that foreign application has been made for the protection of the trade mark to which the convention application relates, and shall specify the country or countries in which such foreign applications have been made, and the official date or dates of those applications respectively.

A copy of the said trade mark, duly certified by the official chief or head of the Patent Office in the country in which the first foreign application was made, or otherwise verified to the satisfaction of the Registrar, must be left at the office at the same time as the application, or within such further time thereafter as the Registrar may allow.

*Assignment.*

The Registrar may, on request made jointly by a registered proprietor of a mark and the person to whom he has assigned such mark, together with the good will of the business concerned in the goods for which it has been registered, register the assignee as proprietor of the mark. Such application shall be in the form No. 14. If the registrar so requires, the assignee shall furnish a declaration in the form No. 15.

Where no such joint request is made, any person who has become entitled to a registered trade mark by assignment, transmission, or other operation of the law, may leave a request at the office for the entry of his name in the register as proprietor of such trade mark. The request shall be on the form No. 16 and such request shall contain the name, address and description of the person claiming to be entitled to the trade mark (hereinafter called the "claimant.").

Together with such request the claimant shall leave a case stating full particulars of the assignment, transmission, or other operation of law, by virtue of which he claims to be entitled to be entered in the register as proprietor of the trade mark, so as to show the manner in which and the person or persons to whom the trade mark has been assigned or transmitted, and so as to show further that it has been so assigned or transmitted in connection with the good will of the business concerned in the goods for which the trade mark has been registered.

Such request shall, in the case of an individual, be made and signed by the claimant, and in the case of a firm or partnership, by one or more members of such firm or partnership, and in the case of a body corporate shall be signed by a director or by the secretary or other principal officer of such body corporate.

If the Registrar determines that the case sets out particulars such as entitle the claimant to be registered as proprietor of

such trade mark, he shall call upon the claimant to furnish a statutory declaration in the form No. 17, verifying the several statements in the case and declaring that the particulars given comprise every material fact and document affecting the proprietorship of the trade mark claimed by such request.

In any case the Registrar may call on any person who desires to be registered as proprietor of a trade mark for such proof or additional proof of title and of the existence and ownership of such good-will as aforesaid as the Registrar may require for his satisfaction.

*Fees.*

	£	s.	d.
On application not otherwise charged to register a trade mark, for one or more articles included in one class.	0	10	0
On application not otherwise charged to register a series of trade marks, for one or more articles included in one class.....	0	10	0
On notice of opposition for each application opposed by opponent .....	1	0	0
On filing a counter-statement in answer to a notice of opposition by the applicant, for each application opposed .....	0	10	0
On the hearing of each opposition, by applicant and by opponent, respectively .....	1	0	0
For registration of a trade mark, for one or more articles included in one class.....	1	0	0
For registration of a series of marks, for one or more articles included in one class—			
For the first mark .....	1	0	0
And for every other mark of the series.....	0	5	0
Upon each entry in the register of a mark of a note that the mark is associated with a newly registered mark .....	0	1	0
On application to register a subsequent proprietor in cases of assignment or transmission of a single mark	1	0	0
On application to register a subsequent proprietor of more than one mark standing in the same name, the devolution of title being identical in each case—			
For the first mark.....	1	0	0
And for every other mark.....	0	2	0
On application to change the name of a proprietor of a single mark where there has been no alteration in the proprietorship .....	0	5	0
On application to change the name of a proprietor of more than one mark standing in the same name, the change being the same in each case—			
For the first mark.....	0	5	0
And for every other mark.....	0	1	0

	£	s.	d.
For renewal of registration of a mark at expiration of last registration .....	1	0	0
For renewal of registration of a series of marks at the expiration of last registration—			
For the first mark of the series.....	1	0	0
And for every other mark of the series.....	0	2	0
For altering a single entry of the address of a registered proprietor .....	0	5	0
For altering more than one entry of the address of a registered proprietor where the address in each case is the same and is altered in the same way—			
For the first entry.....	0	5	0
And for every other entry.....	0	1	0
For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged....	0	10	0
For cancelling the entry or part of the entry of a trade mark upon the register on the application of the owner of such trade mark.....	0	5	0
For certificate of Registrar.....	0	5	0
On appeal to the court from any decision of the Registrar .....	1	0	0
On application to the Registrar for leave to add to or alter more than one mark of the same proprietor, the addition or alteration to be made in each case being the same—			
For the first mark.....	1	0	0
And for every other mark.....	0	10	0
For inspecting register or file in connection with any particular trade mark.....	0	1	0
For making a search amongst the classified representations of trade marks, for every quarter of an hour..	0	1	0
For office copy of documents for every 72 words (but never less than 1s.).....	0	0	3
In cases where the wood block or electrotype of the trade mark exceeds 2 inches in breadth or depth, or in breadth and depth—			
For every inch or part of an inch over 2 inches in breadth .....	0	2	0
For every inch or part of an inch over 2 inches in depth .....	0	2	0
On application for extension of time, for each month or part thereof .....	0	5	0
On an application to the Registrar for leave to add to or alter a single mark.....	1	0	0

*Classification of Goods.*

If any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the Registrar.

*Classes of Goods.*

1. Chemical substances used in manufactures, photography, or philosophical research and anticorrosives.
2. Chemical substances used for agricultural, horticultural, veterinary and sanitary purposes.
3. Chemical substances prepared for use in medicine and pharmacy.
4. Raw, or partly prepared, vegetable, animal and mineral substances used in manufactures, not included in other Classes.
5. Un-wrought and partly-wrought metals used in manufacture.
6. Machinery of all kinds and parts of machinery, except agricultural and horticultural machines included in Class 7.
7. Agricultural and horticultural machinery, and parts of such machinery.
8. Philosophical instruments, scientific instruments, and apparatus for useful purposes. Instruments and apparatus for teaching.
9. Musical instruments.
10. Horological instruments.
11. Instruments, apparatus and contrivances not medicated, for surgical or curative purposes, or in relation to the health of men or animals.
12. Cutlery and edge tools.
13. Metal goods, not included in other Classes.
14. Goods of precious metals (including aluminium, nickel, Britannia metal, etc.) and jewelry and imitations of such goods and jewelry.
15. Glass.
16. Porcelain and earthenware.
17. Manufactures from mineral and other substances for building or decoration.
18. Engineering, architectural, and building contrivances.
19. Arms, ammunition, and stores, not included in Class 20.
20. Explosive substances.
21. Naval architectural contrivances and naval equipments not included in Classes 19 and 20.
22. Carriages.
23. (a) Cotton yarn, and sewing cotton not on spools or reels. (b) Sewing cotton on spools or reels.
24. Cotton piece goods of all kinds.
25. Cotton goods not included in Classes 23, 24 or 38.
26. Linen and hemp yarn and thread.

27. Linen and hemp piece goods.
28. Linen and hemp goods not included in Classes 26, 27 or 50.
29. Jute yarns and tissues, and other articles made of jute, not included in Class 50.
30. Silk, spun, thrown, or sewing.
31. Silk piece goods.
32. Silk goods not included in Classes 30 and 31.
33. Yarns of wool, worsted, or hair.
34. Cloths and stuffs of wool, worsted, or hair.
35. Woolen, worsted and hair goods not included in Classes 33 and 34.
36. Carpets, floorcloth and oilcloth.
37. Leather, skins unwrought and wrought, and articles made of leather not included in other classes.
38. Articles of clothing.
39. Paper (except paper-hangings), stationery and book-binding.
40. Goods manufactured from india-rubber and gutta-percha, not included in other classes.
41. Furniture and upholstery.
42. Substances used as food or as ingredients in food.
43. Fermented liquors and spirits.
44. Mineral and aerated waters, natural and artificial, including ginger-beer.
45. Tobacco, whether manufactured or unmanufactured.
46. Seeds for agricultural and horticultural purposes.
47. Candles, common soap, detergents; illuminating, heating or lubricating oils; matches; and starch, blue, and other preparations for laundry purposes.
48. Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).
49. Games of all kinds and sporting articles not included in other classes.
50. (1) Goods manufactured from ivory, bone, or wood, not included in other classes. (2) Goods manufactured from straw or grass, not included in other classes. (3) Goods manufactured from animal and vegetable substances, not included in other classes. (4) Tobacco pipes. (5) Umbrellas, walking sticks, brushes and combs. (6) Furniture cream, plate powder. (7) Tarpaulins, tents, rick-cloth, rope, twine. (8) Buttons of all kinds other than of precious metal or imitations thereof. (9) Packing and hose of all kinds. (10) Goods not included in the foregoing classes.

*Documents Required.*

All documents to be left with or sent to the Registrar shall be upon foolscap paper of a size of approximately 13 inches by 8

inches, and shall have on the left hand part thereof a margin of not less than  $1\frac{1}{2}$  inches.

Application for registration accompanied by four copies of the mark; an electrotype or wood cut representing the mark exactly as it is required to be registered.

Authorization: In urgent cases the Registrar has allowed the attorney to sign all the documents in connection with an application for registration of a trade mark without producing his authority.

(Forms for application may be obtained from B. Singer's Offices.)

Marking Goods: "Trade Mark Registered."

#### DECISIONS.

##### *Trade Mark Applications in New Zealand.*

The Court of Appeal of New Zealand in June, 1907, handed down a decision of considerable interest, in a case of an application for the registration of a trade mark opposed by a prior registrant of similar marks. The question at issue was whether or not the mark sought to be registered was sufficiently like certain marks registered as to be calculated to deceive, and the importance of the decision lies in the position taken by the court as to the party upon whom, in such case, rested the burden of proof.

It was held that the applicant, in such a case, must prove affirmatively that there was no danger of confusion between the mark which he sought to have registered and the mark already upon the record, and in case of any doubt, the application must be rejected.

The applicant sought to register the trade mark "Rising Sun" for soap, and was met by prior registrations of the words "Sunlight," "Sunbeam" and "Sunshine" in the name of another party, upon the ground of which his application was rejected by the Court of Appeal, reversing the decision of the lower court.

In denying to the applicant the registration sought, Justice Williams said:

"I do not think the judgment in the court below sufficiently recognizes the distinction between an applicant for the registration of a trade mark, and the defendant in an action for the infringement of a trade mark. It seems to assume that to justify the refusal of registration, the evidence must be such that the court would, at the instance of the owner of the existing trade mark, grant an injunction to restrain the use of the trade mark proposed to be registered. \* \* \* The true principle is that the applicant must justify the registration of his trade mark by showing

affirmatively that it is not calculated to deceive, and that, if there is any doubt whether it is so calculated, or not, his application ought to be disallowed. \* \* \* It does not follow, and is by no means to be inferred, that an injunction would be granted at the suit of the appellants, to restrain the use by the respondents of the words 'Rising Sun.'"

Taking up the question of the similarity of the marks referred to, the learned justice said, that while the wrappers and general appearance of the packages were entirely different, nevertheless, this was no test, for the trade mark could be fairly used in a different way, and that the court must consider the consequences which might result from any unfair use of it, and added that he could not say that the applicant had affirmatively proven the unlikelihood of confusion by concurrent use of the two marks.

Justice Denniston, concurring, said:

"I do not think the attention of the chief justice in the court below was sufficiently directed to the difference in procedure and consequences and in the onus of proof in cases for an injunction for an infringement and those for registration, which is clearly pointed out by Lord Watson in *Eno vs. Dunn*. The respondents have not, in my opinion, discharged the onus upon them to satisfy the court that there would be no reasonable danger of the public being deceived. \* \* \* The decision on the question of registration does not determine whether the successful party could, and if so, in what cases, restrain the use of the words refused registration."

Justice Cooper, concurring, said:

"The burden of showing that the trade mark which the respondents have applied to register is not calculated to deceive the public, rests upon the respondents. They must show this affirmatively, and it is a necessary consequence that in dubio the application to register the trade mark ought to be disallowed." (*Lever vs. Newton, P. & T. M. Rev.*, 1907, p. 2174.)

The authority relied upon by the learned justice above quoted, was a decision of the House of Lords of Great Britain in the case of *Eno vs. Dunn*, decided by that body in the year 1890. In this case, Dunn had applied to register a trade mark, consisting among other things, of the words "Fruit Salt" for baking powder. The application was opposed by Eno, who had previously registered the words "Fruit Salt" for a proprietary medicine, and for a powder to be used in making a non-intoxicating

beverage. Before the House of Lords, his position was sustained and the application of Dunn was refused.

The British trade mark law provided that no mark should be registered, which, by reason of its being calculated to deceive should be deemed disentitled to protection in a Court of Justice. Lord Watson, in his opinion construing this provision of the statute, said:

“These prohibitory clauses cast upon the applicant the duty of satisfying the comptroller or the court that the trade mark which he proposes to register does not come within their scope. In an inquiry like the present, he does not hold the same position that he would have occupied if he had been defending himself against an action for infringement. There, the onus of showing that his trade mark was calculated to mislead, rests not on him, but upon the party alleging infringement. Here, he is in petitorio, and must justify the registration of his trade mark by showing affirmatively that it is not calculated to deceive. It appears to me to be a necessary consequence that in dubio his application ought to be disallowed.”

And Lord Herschell, concurring, said:

“It was not contended at the bar that the respondent’s application to have the mark registered should be rejected on the ground that it was an infringement of the appellant’s trade mark. The only point insisted on was that it ought not to be registered, because it was calculated to deceive.  
\* \* \* I think it is enough to say that I am not satisfied that there would be no reasonable danger of the public being so deceived. \* \* \*

To prevent misapprehension, I desire to add that your lordships have not now to determine whether the appellant could in any, and if so, in what cases, restrain the use of the words ‘Fruit Salt.’ I have already indicated my opinion that the appellant has no private property in that. The sole point for decision is whether the comptroller ought to be directed to proceed with the registration of a particular trade mark of which they form an element. For the reasons I have given, I think he ought not.” (Eno vs. Dunn, 1890 Law Reports, Ap. Cas. 252.)

To the same effect is a decision of the British Court of Appeal rendered in the year 1894, cancelling the registration of a trade mark, consisting of the words “Red Star Brand,” by reason of a prior registration, consisting of the representation of a star, with which it was held that the mark last registered might be confused.



Lord Justice Lindley said, in decreeing the cancellation of the second mark :

“It does not at all follow from this, nor is it to be inferred from this, that Brooks & Co. could get an injunction to restrain the Belgian Company from using this brand. I say nothing about that, but I think Brooks & Co. are entitled to have the trade mark ‘Red Star Brand’ expunged.” (Re Trade Mark of La Societe Anonyme, 11 Rep. of Pat., etc., Cases 142.)

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## NICARAGUA

The territorial extent of this Republic is about 50,000 English square miles. The population in 1911 was estimated at 650,000, including Indians.

The Republic is so well situated between the two oceans that it has two lines of coasts; that on the Atlantic extends from Rio Segovia to the embouchure of the Rio San Juan, with a length of 180 to 200 leagues. It receives three great rivers—the Rio Segovia or Gracias, the Rio Grande or Bluefield, and the San Juan.

The coast of the Pacific extends from the Bay of Fonseca to Salinas. The Bay of Fonseca, the port of Corinto, of San Juan del Sur and the Bay of Salinas offer spacious and well protected shelters to shipping.

The seat of the government is at Managua, situated on the south of Lake Managua.

The principal imports are manufactured cotton goods of all kinds, woolen goods, provisions, wines and spirits, flour, barbed wire fencing, drugs, cement, matches, hardware, beer, candles, soap, sewing machines and machinery, sewing thread, coffee bags and galvanized iron roofing.

MONEY—The silver dollar (100 centavos)=1s. 8d.=40 cents U. S. The peso (paper)=8½d. (about)=17 cents U. S.

WEIGHTS AND MEASURES—The metric system.

### *Laws.*

November 21, 1907.

### *Duration.*

Ten years. The duration of the property in a trade mark is indefinite, but it shall be considered abandoned by reason of the closing or lack of production for more than one year, of the establishment, factory or business in which it was used.

*Renewal.*

The registration of each mark entails a charge of twenty-five pesos and should be renewed every ten years. Delay in the renewal does not cause the loss of the right to the exclusive use of the mark, but until it has been accomplished, the interested party shall not bring action to prosecute infringers of the mark and of the article which it protects.

*What Is a Trade Mark.*

A trade mark or commercial mark is the special sign applied to an agricultural or industrial product, or to a commercial article, to advise the public of its origin and to distinguish it from other products of the same kind.

The choice of the sign which is to constitute a mark belongs to the producer of the article for which it is designed.

*Not Registrable.*

1. Generic terms, names merely geographical and those of individuals and associations, unless the mark contains in addition distinctive features which serve to distinguish the object for which it is designed.

2. Any sign that is contrary to morals, or that tends to ridicule ideas, persons, objects or institutions which in the judgment of the Ministry of the Interior are worthy of general consideration.

3. The National arms, escutcheons and emblems.

4. The arms, escutcheons, or emblems of foreign nations, states or political corporations, without their respective consent.

5. The names, signatures, and portraits of living persons, without their consent.

6. Marks identical with or substantially similar to those that have been already registered when it is sought to protect with the former, products of the same class as those protected by the latter.

There shall not be considered as marks, form, color, phrases or designations that do not constitute by themselves the distinctive sign of the specialty, in a commercial sense, of an industrial product.

*Requirements.*

Application for the registration of a trade mark must be accompanied by power of attorney duly legalized and authenticated by a Nicaraguan Consul; electrotype and six reproductions of the same on *thin* paper. Simple or plain names like "Oliver," "Domestic," or even compounds like "Bromo-quinine," without a distinguishing character, are not registrable in Nicaragua, un-

less they have been registered in the home country, in which case a certificate of registration of the home country must accompany other documents. (Forms for application can be obtained from B. Singer's Offices.)

### *Mode of Application.*

Application for registrations ought to be presented to the Ministry of the Interior on stamped paper of the sixth class, signed by the interested party or his representative, the latter to be provided, however, with an authentic power of attorney, and shall contain the following:

(a) The name of the owner of the mark, his domicile and nationality.

(b) The name and location of the factory or establishment where the article is produced for which the mark is designed.

(c) The enumeration and description of the objects or products which it is intended to distinguish by means of the mark.

(d) A description of the mark, illustrated by a facsimile of the same, reproduced in triplicate.

(e) In case the mark is arranged in concave or in relief or presents any other peculiarity that cannot be shown graphically, there shall be presented two copies with an indication of the particulars and details. (Art. 5.)

An application in regard to the registration of a mark having been presented the Minister of the Interior shall ask information of the Chief of the Registration Office. This official shall make an examination of the documents presented in order to ascertain if they satisfy the requirements of the law, and shall complete the resulting information within the third day. If it is favorable the Minister of Fomento shall give an order to register it, payment having been made of the respective fees.

The registration of a mark shall always be made without prejudice to third parties, and upon the exclusive responsibility of the applicant.

The registration having been effected, the Chief of the office shall send to the party interested the certification of the matter, on stamped paper of the first class, the document which constitutes the title to the exclusive use of the mark.

Questions which may arise in regard to the right to the exclusive use of a mark, in regard to the priority of its registration and in regard to its identity with others already registered, shall be decided by the ordinary Tribunals.

When there has been litigation the sentence of execution shall be registered and inserted in the certificate of registration.

*Opposition.*

Whenever there is presented an application for registration of a mark of which Article 5 treats, the Ministry shall cause it to be published in the Official Journal for three consecutive months.

The ninety days having elapsed, if no opposition has been presented, the Ministry shall resolve to grant to the applicant the title of property in the mark which shall be issued on a sheet of stamped paper of the first class.

If there has been opposition, the Ministry shall order the parties to argue their rights before the competent lower judge, and in such case shall only issue the title to him to whom the greater right has been declared by sentence of execution.

*Assignment.*

Trade marks are only transferred with the establishment producing the objects which they serve to distinguish. Consequently the transfer of a mark carries with it the right of industrial or commercial exploitation of the products protected by it. The transfer is not subject to any special formality and shall be proved according to common law, but it should be registered in the trade mark office, without which requisite it shall be without effect against third parties.

*Annulment.*

The registration of a mark shall be null when it has been effected in contravention of the provisions of this law, as also when the mark has been previously registered by another, in which case the nullity shall be judicially declared upon petition of the interested party.

Advice of the sentence of nullity shall be given to the Ministry of Fomento by the judge or Tribunal who has taken cognizance of it in the last instance.

The action demanding the nullity of the registration of a mark is open to anyone who believes himself to be prejudiced thereby; the Public Ministry may also bring it in those cases in which there is any public interest.

The questions regarding the nullity of which the last article treats shall be decided by the ordinary Tribunals and the sentence of execution that contain such decisions shall be registered in the respective office.

*Offenses.*

The following shall be considered guilty of the offense included in Article 319 of the Penal Code and shall be punished by the penalties therein established:

(a) Those who place on articles or products that they sell or manufacture a mark at that time legally registered in favor of another person.

(b) Those who place on articles or products that they sell or produce, a mark that is so close an imitation of one legally registered as to be confounded with the lawful mark at first sight.

(c) Those who place on the articles mentioned a mark which, although legally registered, is made to appear by any addition, subtraction or alteration as if it were another mark.

(d) Those who place on sale or put into circulation goods marked under the circumstances which the preceding sections enumerate.

Articles or products, if objects of the offenses named in the preceding article, shall be confiscated; but when the owner of a mark, legally registered, has been constituted plaintiff, he shall be entitled to have appropriated to him all the products which are found bearing the illegal mark, whether then in the possession of the guilty party or in the possession of an agent or consignee.

The present statute (Law of November 21, 1907) contains many provisions which in character and terms are very suggestive of the trade mark law of the United States, after which it is apparently modeled in many respects.

The benefit of the law appears to be extended both to native citizens and to foreigners, without distinction. The right to the exclusive use of the mark depends upon registration, although there is a provision permitting an action for the annulment of the registration "by whomsoever shall consider himself prejudiced by it." Whether this is intended to confer upon the prior user who has failed to register, the right to cancel a registration made by another, is not clear from the law.

The duration of the registration is ten years. The provision for the renewal of the mark at the expiration of this time, shows very unusual regard for the rights of the owner of the mark. The failure to make the renewal at the proper time will work no forfeiture of the right to the exclusive use of the mark, but, until the tax shall have been paid and the mark renewed, the owner can maintain no action for counterfeiting of the mark, or for its protection against infringement. In this respect, the statute is far in advance of the trade mark laws of other Spanish-American countries, where it often happens that a mark inadvertently allowed to expire, is immediately seized upon and registered by someone who had no right to do so, but who finds therein a source of profit.

Fine and imprisonment under the provisions of the Penal Code are imposed upon those who wrongfully make use of another's registered trade mark, or of any imitation thereof, calculated to deceive. Articles bearing infringing marks are subject to confiscation and in a proceeding instituted by the owner of a reg-

istered trade mark, the ownership of the goods thus wrongfully marked may be awarded to him.

Property in a trade mark is of perpetual duration, but a trade mark will be deemed abandoned by entire disuse for more than one year.

#### *Pure Food and Drugs Law.*

Under date of April 6, 1908, an important decree regulating the importation and sale of food products and patent medicines was issued by the President of this Republic.

By its terms, the importation from abroad, or the manufacture within the Republic, of adulterated or misbranded drugs or food products is prohibited. Patent medicines are required to bear a label displaying the exact formula of their composition. Those not so branded on the date mentioned must be analyzed at the official laboratories and bear upon the label the analysis of the official chemist. From July 6th importations through the Customs House of patent medicines not properly branded in accordance with the law is strictly prohibited. Violation of this law by the importation or sale of offending goods is punishable by a fine of two hundred to one thousand pesos or imprisonment for from three months to one year "besides such criminal responsibility as may be incurred in accordance with the penal law." (Bulletin of the Bureau of American Republics, 1908, p. 1287.)

#### *Protection of Trade Names.*

The law of Nicaragua forbids registration of a proper name, name of a company or corporation, except when it forms part of a distinguishing mark (Law of 1907, Art. 3, 1). As to this country, therefore, the only apparent protection to be obtained for trade names is to register them in connection with trade marks and as part thereof, trusting that the use of a name so registered will be regarded as an infringement upon the mark. There is no other reference in the law applicable to trade names.

#### *The Reuter Soap Trade Mark.*

A decision was rendered in the criminal court at Grenada, Nicaragua, in a case of falsification of the well known "Reuter" soap label. The prosecution was instituted by a representative of Barclay & Barclay of New York against a certain merchant of Nicaragua, who was shown to have offered as a substitute for their Reuter soap, one bearing the trade mark "Rotier." Three witnesses testified that they had asked at defendant's store for the "Reuter" soap and had received instead the imitation article. The wrappers of the "Rotier" soap were of black paper with lettering and designs in yellow similar in this respect to the wrappers used on the "Reuter" soap.

In deciding the case for the complainant, the court cited the decree of 1907, for the protection of trade marks, which provides that they shall be held guilty under the Penal Code, who either apply to goods which they produce or sell, a mark in imitation of one legally registered, in such a way that at first sight it may be mistaken for the legal one, or they who place on sale goods marked in the manner stated. It was shown that the "Reuter" soap label had been registered in Nicaragua and therefore was entitled to protection under the law. The contention by the defendant that the "Reuter" soap label could not be legally registered in Nicaragua, because the form, colors, phrases or designations contained thereon did not constitute of themselves a distinguishing mark, was held to be groundless. It was further held that citizens of foreign countries enjoyed the same privileges in Nicaragua as natives in respect to marks of manufacture or trade. Upon these considerations, the court held that the defendant was guilty of the offense charged, and decreed that his property be seized in sufficient amount to reimburse the complainant firm for the damages suffered. (El Comercio, Managua, Nov. 6, 1911.)

Marking Goods: "Marca Registrada, or M. R."

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## NORTHERN NIGERIA

This territory is bounded on the north by the French Soudan; on the west by French Dahomey; on the southwest by Lagos; on the east and southeast by the German Cameroons, and on the south by Southern Nigeria. The River Niger runs through the western portion of the territory and the River Benue through the southern portion. The principal towns are Bauchi, Bida, Dekina, Gassol, Gujba, Ilorin, Karoina, Kano, Katagum, Keffi, Kontagora, Lokoja, Maiugari, Sokoto, Yola, Zaria. The area is about 281,000 square miles. The native population in 1911 was estimated to be 7,165,800.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

### *Laws.*

Trade Marks Proclamation No. 25, Sec. 39 of 1900. Amending the above, 1901.

### *Duration.*

Fourteen years; renewable.

### *What May Be Registered.*

- (a) A name of an individual, or firm, printed or impressed, or woven in some particular or distinctive manner; or
- (b) A written signature or copy of a written signature of

the individual or firm applying for registration thereof as a trade mark; or

(c) A distinctive device, mark, brand, heading, label, or ticket.

(d) An invented word or invented words; or

(e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

There may be added to any one or more of the essential particulars mentioned in this section any letter, words, or figures, or combination of letters, words, or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of added matter, and a copy of the statement and disclaimer shall be entered on the register.

#### *Requirements.*

Power of attorney, six copies of the mark, electrotype or wood cut.

#### *Government Fees.*

On application, 10s.; on completion, £1; renewal fee, £1.

#### *Assignment.*

Assignments must be recorded. Trade marks are assignable with the good will of the business. Assignment fee, £1.

#### *Classification.*

Same as British.

## NORWAY

Norway, a kingdom of Northern Europe, comprises the western and northerly portions of the Scandinavian peninsula containing an area of 124,100 square miles. It is about 1,100 miles in length and 250 at its greatest breadth. The coast line is enormous owing to the numerous fjords which penetrates the land in all directions. The country is divided into twenty provinces or amts.

The population in 1911 was estimated to be 2,392,900, two-thirds of whom are employed in agriculture, the timber trade and fisheries.

The wealth of the country consists of its timber, fisheries, ice and mineral resources; of these the ice, paper, wood-pulp, canned goods, granite, portable houses and joinery, fish oils, machinery and ship-building trades, and its mines, are being rapidly developed.



The imports are as follows: Colonial wares, cotton goods, iron, grain of all kinds, coal and coke, salt, woolen goods, machinery, chemicals for the wood-pulp and paper trades, coopers' supplies, raw wool and cotton, etc.

The area covered by forests in Norway is about 87,000 square kiloms. and 73% of the timber is pine wood (red and white) and about 27% umbrageous trees, among which the birch predominates.

MONEY—The krone of 100 öre=1s. 1 $\frac{1}{3}$ d.=27 cents U. S.

WEIGHTS AND MEASURES—The metric system.

#### *Laws.*

May 26, 1884, and January, 1911. Decree of December 29, 1884.

#### *Duration.*

Ten years, which may be extended for like period.

#### *Renewal.*

A registered mark may be renewed during a time not exceeding three months after expiration of the term for which the registration is granted on payment of an additional fee of kr. 5. Notice as to renewal will be given to the proprietor by the Administration. (Art. 12.)

If a registered trade mark is not renewed, the trade mark cannot be registered by any other person until two years after the cancellation. (Art. 3.)

#### *Who May Register.*

Any person who carries on within the kingdom manufacturing, agriculture, metallurgy, commerce or industry may, by registration in accordance with the law, acquire the right to use special marks to distinguish his products from those of others. Any person engaged in any such industry in another country, provided the country in which he is located accords reciprocal rights to Norwegian subjects, may register his mark previously registered in his own country.

#### *What May Not Be Registered.*

(1) Marks consisting exclusively of numerals, letters or words not distinctive in form; (2) which contain unlawfully the personal or commercial name of another or of property belonging to another; (3) which contain public arms or insignia; (4) which contain pictures or other representations of a scandalous nature; (5) which are identical with, or so nearly resemble as to be easily

confounded with, marks already registered for the same class of merchandise.

But the marks of foreigners may, under conditions of reciprocity, be registered in the form registered abroad, even though consisting solely of numerals, letters or words.

### *Requirements.*

Certified copy of home registration, legalized by Norwegian Consul; legalized power of attorney; eleven copies of mark and two electros or wood cuts.

#### *Application for Protection of Trade Mark and Its Treatment.*

The application shall comprise and be accompanied by:

1. A letter addressed to the Patent Office stating:
  - (a) The applicant's name, or style of firm and residence.
  - (b) The business in which the trade mark is to be used.
  - (c) The goods or classes of goods for which registration is desired.
2. A representation of the mark not exceeding 6.5 cm. square for word marks, and 10 cm. square for other marks, and, if necessary, a description of the mark.
3. If an attorney is appointed, a power of attorney accepted by him.
4. A fee of Kr. 30 for the registration and publication. If the mark is to be registered in more than one class, an additional fee of Kr. 10 is payable for each additional class.

Kr. 10 is, however, refunded to the applicant in respect of each class in which he has applied for registration but in which the mark has not been registered.

Before registration can take place the applicant must send to the Patent Office a wood block or electrotype suitable for the printing of the mark and ten prints of the mark of the size mentioned under 2. (Art. 11.)

An application for renewal shall comprise the particulars mentioned under 1 and 2 in the preceding article and a fee of Kr. 10 for each class in which renewal is desired.

On payment of an additional fee of total Kr. 5 the application for renewal may be filed within three months after expiration of the period of protection.

If the application has not been received at the expiration of the period of protection, the Patent Office shall send notice to the proprietor of the mark; omission to do so shall, however, not involve any responsibility. (Art. 12.)

Any defects in the application shall not entail any change as to the date of filing when such defects are remedied in due time.

The application shall, however, not be considered filed until receipt of the representation of the mark. (Art. 13.)

The Patent Office (1st Section) shall treat the application received in accordance with the rules laid down. (Art. 14.)

If the application is not in conformity with the rules laid down, the applicant shall be notified thereof and grounds given, and he shall be requested within a reasonable lapse of time, to explain and remedy the defects mentioned. (Art. 15.)

After the expiration of this respite the application is submitted to the decision of the Patent Office. (Art. 16.)

The applicant can demand a fresh investigation by the Patent Office (2d Section) regarding a refusal of registration.

Such demand must be lodged within two months from the date on which the notice of refusal was sent him from the office.

A fee of Kr. 20 is payable thereon. If such fee has not been received before the expiration of such delay, the demand shall be considered as not having been filed. (Art. 17.)

The decision arrived at by the Second Section of the Patent Office and by which registration is refused, shall be final. (Art. 18.)

When a decision is arrived at regarding registration, the Patent Office shall enter the mark in the Trade Marks Register, issue a public notification regarding the registration in the Official Gazette, and in the journal mentioned in the law relating to the Patent office, and shall issue to the applicant a certificate of registration.

On renewal of the registration public notification and certificate shall likewise be issued. (Art. 19.)

#### *Assignment.*

The right to use a trade mark protected by registration shall be assigned only in connection with the business in which it is used.

On transfer of the business the right to the mark is vested in the new owner, unless otherwise stipulated.

#### *Fees.*

For each application the fee is kr. 30, with the addition of kr. 10 for each exceeding class if the mark is to be registered in more than one class. The additional fee of kr. 10 is, however, refunded in respect of each class in which the mark is not registered. (Arts. 11 and 13.)

#### *Classification of Goods.*

CLASS 1. Mineral raw materials, including metals unwrought or half-wrought, not included in other classes.

CLASS 2. Vegetable and animal raw materials, unprepared or half-prepared, not included in other classes.

CLASS 3. Chemical products (not included in other classes)

for industrial, agricultural, medical and photographic use, disinfectants, dressings (surgery), artificial and natural manure.

CLASS 4. Agricultural and horticultural products, such as corn, grain, flour, meal, seed, plants, herbs, flesh, meat, fish, poultry, eggs, game, vegetables, fruit, butter, cheese, eatable oils and fats.

CLASS 5. Articles of food for men and animals (not included in Classes 4, 22 and 23); included are: bread, etc., pastry, colonial produce, groceries (tea, coffee, etc.), yeast, baking powder, salt, vinegar, syrup, honey, spices.

CLASS 6. Prepared articles of vegetable or animal raw materials (not included in other classes) for clothing, traveler's outfit, etc., furniture outfit, upholstery; manufactures of book-binding and of portfolios-making; articles of celluloid and the like.

CLASS 7. Varnish, wax, oils and fats not eatable, petroleum, tar, resin, rubber, caoutchouc, and manufactures of such substance (if not included in other classes), f. inst., candles, "make-fires"; fuel.

CLASS 8. Soap, detergents and preparations for laundry purposes. Perfumes, paints, and other toilet articles.

CLASS 9. Colors (not ink), cements, artificial finishing means (appreture).

CLASS 10. Hardware, haberdashers' goods, needles, pins, fancy goods; toys, games, playcards.

CLASS 11. Machinery, tools and implements with accesories (not included in other classes); grinding means (emery, etc.). In this class are also included printing implements, types, electrotypes, lithographic stones.

CLASS 12. Electric machinery, apparatus and accessories.

CLASS 13. Cordage, cables, fishing lines, fishing nets; driving belts, packing materials, insulating material; waste (cotton waste).

CLASS 14. Vehicles, cycles, autocars, aeroplanes, sporting articles and arms, cutlery and edge tools, boats, salvage apparatus.

CLASS 15. Articles of metal or wood, etc., for domestic purposes, such as furniture, bedsteads and outfits, kitchen utensils, goods made by coopers and by basket makers.

CLASS 16. Natural and artificial building material and other articles for building purposes, such as lighting, heating and cooking (not included in other classes); linoleum, paperhangings.

CLASS 17. Articles of paper (not included in other classes), printings, ink, articles for advertising purposes, instruments and apparatus for teaching, school fittings, implements for gymnastic exercise; drawing implements and tools.

CLASS 18. Photographic instruments and accessories, cinematographic apparatus and films therefor, musical instruments, gramophones, etc., and plates therefor.

CLASS 19. Scientific, optical, surgical, medical, etc., instruments and apparatus.

CLASS 20. Watches and clocks, goods made by goldsmiths and silversmiths, plated goods, etc.

CLASS 21. Porcelain and earthenware, ceramics, articles of glass.

CLASS 22. Chocolate, cacao, sweets, drops and other goods made of chocolate and of sugar.

CLASS 23. Preserved foods.

CLASS 24. Spirits and fermented liquors, mineral waters, etc.

CLASS 25. Tobacco and smoker's articles.

CLASS 26. Articles of rubber, caoutchouc and gutta-percha.

CLASS 27. Wood pulp, cellulose, paper, pasteboard.

CLASS 28. Matches.

CLASS 29. Explosives, fireworks.

CLASS 30. Textile goods.

*Infringement of Trade Marks Right, and Fraudulent Marking of Goods and Business Names.*

Any person who, on goods offered or intended for sale, on the packing of such goods, illegally places:

(a) The mark protected by registration by any other person for goods of the same or of a similar nature;

(b) The name of another person or firm; or

(c) Anything which in the trade generally is likely to cause confusion in these respects, or who illegally offers or sells goods marked in this manner, may by prosecution by the wronged person be condemned to lose the right thereto.

If he was aware of the rights of such other person, he shall be punished with a fine or imprisonment not exceeding three months. Both in this case, and if he is guilty of carelessness, he shall be bound to make good the damage caused. Official prosecution shall take place at the demand of the wronged person only. (Art. 22.)

On goods which are offered or intended for sale, on the packing of such goods, must not illegally be placed marks or mountings which within the business circle concerned are known to be the special distinguishing sign of another business for goods of the same or similar nature and likewise goods marked or mounted in such manner must not be offered or sold if it be supposed they are likely to be confused regarding the firm from which such goods originate.

Any person who acts in contravention thereof may, by prosecution by the wronged person, be condemned to lose the right to use the mark or sign or to offer the goods.

If he was aware of the rights of such other persons, he is to be punished with a fine, and shall be bound to make good the

damage caused. Official prosecution shall take place at the demand of the wronged person only. (Art. 23.)

Any person who on goods which are offered, or are to be offered for sale, on the packing of such goods, places his name or firm name in such a manner as to be likely to be confused with a distinguishing sign legally used by any other person for goods of the same or similar nature, or who offers or sells goods marked in such manner may, by prosecution by the wronged person, be condemned to lose the right thereto.

If his intention has been to cause such confusion, he shall be punished with a fine, and shall be bound to make good the damage caused. Official prosecution shall take place on the demand of the wronged person only. (Art. 24.)

On goods which are offered, or are to be offered for sale, must not be placed any incorrect statement as to the place of origin of such goods, or any statement which in this respect is likely to cause confusion, nor must goods marked in such manner be offered or sold.

Any person acting in contravention thereof, may be bound over to desist from using such incorrect statement when offering the goods. If he has knowingly been making use of such incorrect statement he may be compelled to make good the damage caused.

If it has been his intention to deceive regarding description, contents, composition or value of such goods, he shall, in addition, be punished with a fine.

Under this provision are not included such statements of places, which in accordance with commercial usage aims at the nature, but not at the origin of such goods.

The King may, however, in accordance with agreement entered into with a foreign State, stipulate, that the importation into this Realm of goods, having such statement as mentioned in the preceding sub-section, shall be prohibited unless the goods are accompanied with satisfactory information to the effect that they are genuine goods originating in the country or portion of country in question. The King may also forbid the offering for sale and selling within the Realm of goods under such statements as mentioned, unless the goods are genuine, and coming from the country or portion of country in question.

Transgression of the prohibition laid down in the preceding sub-section shall be punished with a fine. (Art. 25.)

Any person who gives his enterprise or business a name which is likely to be confused with the name already by right employed by another person for his enterprise or business of the same or similar kind; may be prosecuted by the wronged person and condemned to forfeit such name.

If it has been his intention to cause such confusion he shall be punished with a fine and bound over to pay any damage

caused. Official prosecution shall take place at the demand of the wronged person only. (Art. 26.)

Any person who has made use of goods or business designation against the provisions of the present law, shall alter or remove such designation at the demand of the wronged person. If removal or alteration cannot take place, the confiscation of the articles on which it is placed may be demanded.

The confiscated articles may, by agreement between the convicted and wronged party, be handed over to the latter as part payment for compensation. (Art. 27.)

Prosecution shall take place at the Christiania City Court (Christiania Byret). Four weeks' notice shall be given irrespective of the defendant's place of residence. Notification to the Patent Office shall be sent to the Director. (Art. 28.)

If a person, who in a civil action is prosecuted for Trade Mark infringement, should base his defense on a claim that the registration is invalid, the court in question shall, at his demand, eventually allow him sufficient time for obtaining a decision as to the invalidity of the registration. (Art. 29.)

*Law in Force in Norway to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The law prohibits the sale or offering for sale, but not the importation, of goods bearing a false indication as to their place of origin. No steps are taken to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods to show the country or place of origin or to denote that they are foreign.

Marking Goods: "Registret Varemerke."

DECISIONS.

*Right to a Proper Name in Norway.*

A judgment of the Municipal Court of Christiania, Norway, adjudicates the question of the right of a party to control the use of his own name in connection with the sale of goods.

A physician of that city had ordered glass syringes for the use of his patients, that were of a peculiar shape and size and had his name etched on the side. He had, by special agreement, given to the proprietor of a drug store, permission to sell these syringes with his name upon them. A dealer in surgical instruments began to sell the article under the name of the physician, but without his authorization, and the physician was awarded a judgment against the dealer, who, it was declared, had no right to sell the syringes with the former's name upon them. The physician, it was said, had no exclusive right in the design of the article and anybody could sell it, but he had the right to

control the use of his name and to prevent the use thereof without his permission.

*Trade Mark in the Shape of a Bottle.*

The Supreme Court of Christiania, Norway, has rendered a decision determining the extent to which the shape of a bottle or other receptacle for goods can be protected in Norway as a trade mark. A French manufacturer had registered in Norway as his trade mark for pharmaceutical preparations a triangular bottle intended to enclose the drugs and medicines of his manufacture. It was held that, by virtue of such registration, he could not prevent a Norwegian house from using bottles of the same shape for the sale of the like products. Inasmuch as the Norwegian law protected only marks destined to be placed upon the merchandise themselves or upon the receptacles containing them, it was considered that the alleged mark was not such as could be protected under the Norwegian law. It was denied that the form of package alone, and without any other mark of the kind prescribed by the law, could be protected as a trade mark or be subject to the rules governing such. It was held that the registration conferred only such a monopoly in the mark as would enable the registrant to prevent any other from placing the design or figure of a triangular bottle as a trade mark upon his products or upon the packages containing them, but could not confer a monopoly in the use of a package of that shape, there being no question of trade mark rights involved therein. (*La Propriété Industrielle*, 1906, p. 9.)

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## OMAN

Oman, in southeast Arabia, is an independent kingdom or principality having a coast line of about 1,000 miles along the Persian Gulf, extending from the vicinity of Ras Mussendom on the north to Dhofar on the south and being bounded towards the interior by the Great Arabian Desert. It has approximately an area of 81,000 square miles, and a population of 500,000. Muscat, the capital, is a walled town of about 25,000 inhabitants, with a small, but a well sheltered harbor.

The imports consist principally of rice, piece goods, cotton, sugar, grain, oil, coffee, arms, ammunition and silk.

The chief product of the country is fruits. Fresh dates are taken by America; dry dates, pomegranates, limes, etc., are exported chiefly to India. The textile manufactures of the country, formerly extensive, have now been killed by the cheaper looms of Manchester and Bombay.



There is no ordinance relating to trade marks, but advertisement of ownership, registration at the customs house of Muscat or public use of a mark would be considered as ground for raising action against infringement.

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## ORANGE RIVER COLONY

This Colony is bounded on the south by the Orange River, which divides it from Cape Colony, on the east by British Basutoland and Natal, on the north by the Transvaal, and on the west by the Transvaal and Griqualand West. The area is estimated at about 50,000 square miles. The total population in 1911 was estimated at 390,000, of which number about 145,000 were whites. It is in the main a pastoral country, but increasing areas are being cultivated, and a considerable export trade in maize is developing. The rearing of sheep, goats, horses, horned cattle, mules and ostrich farming is, however, the principal industry. There are extensive deposits of coal of good quality, and precious stones found here.

MONEY WEIGHTS AND MEASURES—Same as Great Britain.

### *Law.*

Provision is made in the Orange River Colony for the registration of trade marks by Statute 63 of 1891, as amended by Act No. 13 of 1893. Regulations referring to the registration of trade marks, August 5, 1903.

### *Duration.*

No provision is made in the Act for the period of protection which registration affords, but it is presumed that it was the intention of the legislature that it should be for a period of 14 years as in the schedule of fees to the Act, provision is made for the extension of the right to any trade mark after the expiration of 14 years by the payment of a fee of £2. It may consequently be taken that registration is perpetual, subject to the payment of the renewal fee at the expiration of each 14 years. No provision is made in the law or in the rules issued under it for the period within which the renewal fee must be paid, nor is the Registrar given any authority to grant an extension of time within which to pay the renewal fee; it is therefore recommended that the tax should be paid before the expiration of 14 years. The certificate of registration should be produced.

### *What May Be Registered.*

(a) The name of an individual or firm printed, stamped or woven in a peculiar or distinctive manner; or

(b) A written signature or copy of a written signature of the individual or firm applying for the registration thereof as a trade mark; or

(c) A distinguishing device, mark, brand, label, or a word or words not in daily use.

And to any or more particulars may be added letters, words or figures, or combinations of words, letters or figures, or any of them, provided, however, that any special and distinguishing word or words, letter, figure or combination of letters or figures or of letters and figures used as a trade mark before Act No. 13 of 1893 was passed may be registered as a trade mark under this or any other law.

No mark will be accepted for registration unless consisting of or containing one of the above essentials.

#### *Series of Marks.*

There is no provision made for the registration of a series of marks.

#### *Mode of Application.*

In order to obtain registration of a trade mark, an application, accompanied by an affidavit, must be filed with the Registrar of Deeds at Bloemfontein. Both must be written on durable paper, foolscap size, having at the left hand side a margin of not less than two inches.

The application must be signed by the applicant himself and cannot be signed by an agent under power of attorney. Where the applicant is a firm the application and affidavit must be signed by a partner of the firm who should add the words "a member of the firm" after his signature, and in the case of a Company by the Secretary or other proper official, adding after his signature, the words "on behalf of the Company."

The affidavit if made in the Colony must be signed before a resident Magistrate or Justice of the Peace, if made elsewhere it must be signed before a Magistrate or a Justice of the Peace whose official seal must be affixed to the affidavit. In default of such official seal the signature of the Magistrate or Justice of the Peace must be authenticated by the proper officer authorized for that purpose in the country where the affidavit is signed.

For the purpose of registration of a trade mark, the goods are classified according to the schedule provided, and in the event of any doubt arising as to the classification of any special article the Registrar of Deeds decides the point. It is advisable to leave the number of the class or classes blank in the application form.

As thirty days must elapse between the day on which the notice of application first appears in the Government Gazette and the day on which the application for registration of the mark

will be made, a period of six weeks is the average time required for effecting registration.

#### *Assignments.*

The right to the use of a trade mark is assignable by an instrument in writing. No special form is provided by the Act or Rules.

Where a person becomes entitled to a registered trade mark by assignment, or otherwise, a request for the entry of his name in the register as proprietor of the trade mark shall be addressed to the Registrar. The certificate of registration should be produced.

#### *Documents Required.*

Application form; affidavit; power of attorney; one block or electro of the trade mark; four representations of the trade mark. (Forms for application may be obtained from B. Singer's Offices.)

#### *Classification.*

Practically the same as in Great Britain.

Marking Goods: "Registered Trade Mark."

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## PANAMA

The Republic of Panama (established in 1903) extends over the area known as the Isthmus of the same name, and lies between the Caribbean Sea on the north and the Pacific Ocean on the south. Up to 1903 it formed a part of the Confederation known as the Republic of Colombia, and it has but three towns of any importance—the port of Colon and Bocas del Toro on the north and that of Panama on the south. The area is about 32,000 square miles and the population is estimated at 450,000. The completion of the Panama Canal makes both Colon and Panama very important places, as Colon is only 2,000 miles from New York and 4,000 from Southampton, and the trade of the Pacific Coast of the United States and the West Coast of South America will necessarily pass through the Canal. The French company established by the late M. Ferdinand de Lesseps sold its interests in the Canal to the United States Government in 1904, and the work on the Canal was restarted on the 1st of July of that year.

Under the terms of the treaty between the United States and the Republic of Panama, the latter has ceded to the former a strip of land 10 miles wide, through which the Canal passes. The United States has absolute sovereignty in this territory and has organized a separate government.

MONEY—Dollar (peso)=about 2s.=48 cents U. S.; balboa (gold)=2 silver pesos.

WEIGHTS AND MEASURES—The metric system.

### *Laws.*

January, 1905, No. 24 of 1908, and 29th day of January, 1911.

### *Duration.*

The property in a mark of manufacture or trade is acquired only for a term of ten (10) years; however, it may be renewed indefinitely for equal terms. (Art. 4.)

Every mark, the renewal of which not having been duly solicited (Art. 18 of Law 24 of 1908), shall be cancelled, but during the following two years only the person in whose favor the mark was registered shall have the right to register it again. (Art. 10.)

### *What May Be Registered.*

There is considered as a mark of manufacture any phrase or sign used for distinguishing or determining some special product intended for an industry or a trade, and as a mark of trade the distinctive phrase or sign of some article of commerce intended for a person or a commercial house. (Art. 1.)

Petitions for the registration of marks which bear names, designation of firms, photographs or facsimiles of signatures other than those of the party soliciting the registration, shall be accompanied by the relative authorization of their owners, or of the heirs, which shall expressly show the authority for the use of such name, photograph, designation of firm or facsimiles of signatures. Registrations effected in contravention of the article shall be valueless. (Art. 8.)

The name of the merchant or of a commercial or industrial society shall in itself constitute ownership. The title or designation of a firm doing business in any of the commercial centers of the Republic shall enjoy equal rights within the respective business locality, pending registration in accordance with the regulations governing the registration of national marks. (Art 13.)

There is prohibited in marks of manufacture or trade the use of the coat-of-arms of the Republic and of the National Flag, also the use of drawings, engravings and vignettes which are contrary to morality.

Marks shall not be registered which consist exclusively of information concerning class, date and place of manufacture, or concerning quality, uses and condition of price, quantity and weight of the merchandise. (Art. 9.)

*Mode of Application.*

Every citizen of Panama or foreigner who is the owner of a mark of manufacture or trade may obtain the exclusive right to use it in the territory of the Republic, by means of the formality of registration in the respective office, for which purpose the following procedure shall be observed:

The interested party shall present either himself or through a legally appointed attorney, at the Ministry of the Interior an application for the registration of the mark of manufacture, explaining in an entirely clear manner the distinctive sign which constitutes it, the product or article to which it refers, and the place where the latter is manufactured.

The application shall be made on stamped paper of the first class, and it shall be accompanied by two specimens of the mark or of its representation in the form of a drawing or of an engraving. To each of said specimens shall be affixed a stamp with the national arms ("timbre") of the first class, and it shall be signed on the back by the interested party, with note of the date of application.

The application shall be published for two consecutive times in the *Gaceta Oficial*, and, if no objection is presented in opposition within thirty (30) days after the first publication, the registration of the mark will be made, if it is a mark of manufacture; if it is a mark of trade, the registration will not be made until sixty (60) days after the date of the first publication. One certificate of registration shall be sent to the interested party and it will constitute the title of property in the mark in question. Such certificate shall be issued on stamped paper of the first class and it shall be published two times in the *Gaceta Oficial*. (Art. 3.)

In case of opposition to the registration of a mark the Executive shall decide the matter in the shortest time if it be not indispensable to await proofs to justify the opposition, in which case a prudent period, in the judgment of the Executive, shall be granted. (Art. 23.)

The cost of publishing the application in the official periodical shall be at the expense of the interested party. (Art. 4.)

*Requirements.*

Power of attorney, legalized; four copies of the mark; two electrotypes; a certified copy of home registration, legalized. (Forms for application may be obtained from B. Singer's Offices.)

*Fees.*

Twenty-five dollars for the first term, and \$20.00 for each renewal.

*Infringements and Penalties.*

Usurpation of the right of ownership of a trade or commercial mark shall incur a fine of from \$25 to 250 balboas, or arrest of from two to three months, in addition to the confiscation of the goods according to Article 27 of Law 24 of 1908. (Art. 16.)

The manufacturer and the importer as well as the vendor are responsible for the undue use of a trade or commercial mark; in consequence they shall incur the established penalties:

1. Those who falsify or adulterate in any way whatsoever a trade or commercial mark.

2. Those who use in their own products or articles of commerce a mark identical with or substantially similar to a mark owned by another person.

3. Those who make use, in any manner whatsoever, of a mark which obviously imitates, for any reason whatever, a mark registered in favor of another person.

4. Those who knowingly sell, offer in sale, or agree to sell or put into circulation, articles bearing falsified or fraudulently applied marks.

5. Those who with intent to defraud, mark or cause articles to be marked with false labels or designations, whether it be in respect of their nature, quality, quantity, number, weight or measurement, or of the country of origin or manufacture; or use the expression *Marca Registrada* (Registered Mark) or its equivalent *M. R.* (*R. M.*) when the mark has not been registered.

6. Those who knowingly sell or offer to sell articles with the false indications to which the foregoing section refers. (Art. 17.)

For a repetition of the offense the penalty shall be doubled. (Art. 18.)

The use of a false mark on one article only shall be sufficient to show violation or usurpation of the right. (Art. 19.)

Registered marks which are applied to articles other than those expressed in the corresponding certificate shall not be considered as registered. (Art. 20.)

It is not necessary to be the owner of the mark in order to claim against its falsification or imitation. Any manufacturer or consumer who considers himself injured by a falsification or imitation or by fraud as mentioned in the present law shall have the right to accuse and prosecute. When the accusation has not been made by the owner of the mark, the articles confiscated shall be for the benefit of the public treasury. (Art. 21.)

In case of confiscation the marks which have not been in use shall be destroyed, and those affixed to merchandise shall be destroyed or annulled. (Art. 22.)

*Priority.*

The person or the company being the first to make use of a mark of manufacture or trade is the only one who has the right to acquire the property to it. In case of dispute between two or more possessors of the same mark, the property will devolve upon the first possessor, and, if the duration of possession should be the same, to the first one who applied in the respective office for its registration. (Art. 11.)

The registration of marks, no matter whether marks of manufacture or of trade, shall be made without previous examination respecting the usefulness of the article, and of the quality and properties of the products for which they are intended, at applicant's exclusive responsibility and reserving always the rights of third parties.

*Law in Force in Panama to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

There is no law preventing the importation and sale of goods bearing a false indication of origin. There are no regulations as to the marking of imported goods to show the country or place of origin or to denote that they are foreign.

Marking Goods: "Marca Registrada" or "M. R."

*Assignment.*

The transfer of a trade mark shall be recorded at the office where it is registered, otherwise the right to use it shall not be conveyed to the purchaser or assignee.

*Comment on New Trade Mark Law.*

The Panama trade mark law of 1908 has been materially modified by an Act made effective on January 29, 1911. The provisions of the new Act, both in the greater safeguards thrown around the registration of trade marks and in the penalties provided for infringement, bring the legislation on this important subject more nearly into agreement with that now in force among English-speaking peoples.

For the registration of firm names, portraits or facsimile signatures, other than those of the applicant, it is necessary to obtain the authorization of those whose names, portraits or signatures are concerned, or of their heirs, without which authority no registration shall be made or if made shall be void. This provision is taken from the law of the Argentine Republic. The United States law has a like clause relating to the portraits of living persons. Marks indicating the kind of goods, the date or place of manufacture, or the quality, price or quantity can not be registered as trade marks.

After the lapse of a trade mark registration and the failure

of the owner to renew it, the mark can not be registered by any other than the original registrant, within two years of such expiration. This provision is adopted from the German law and is intended to prevent the theft of trade marks that have been allowed to elapse by oversight, or through the inattention of the owners of the marks or of their agents.

The name of a trader or of a commercial or manufacturing company constitutes a species of property not further referred to in the Act, but since nothing is said of the registration of such names, it may be presumed that they are protected as property, without registration. In so far as concerns the sign or trade name used upon a commercial establishment, the like right may be obtained but only for the locality where the business is carried on and only by means of a registration made in accordance with the provisions of the trade mark law. Corporations have the same rights in their names as individuals.

The misappropriation of trade marks is punished by a fine of five to two hundred and fifty balboas and imprisonment of one to three months, in addition to the confiscation of the merchandise provided in the old Act. They are held to be infringers who counterfeit a mark or who place upon their products, or upon articles in which they trade, a mark identical with, or substantially similar to, the mark belonging to another person; those who knowingly sell or place on sale articles bearing counterfeit or fraudulent marks; those who, with fraudulent intent, place upon merchandise, labels or false designations concerning their nature, quality, quantity, number, weight or measure, or the country of their production or manufacture, or make false use of the term "Mark Registered," or who knowingly sell or place on sale articles bearing such false markings. The penalties are doubled for the second offense. Proof of the application of the infringing mark to a single article is sufficient to constitute infringement.

In order to prosecute for counterfeiting or imitation of a mark registered, it is not necessary that the plaintiff be the owner of the mark. Any manufacturer or consumer who shall judge himself injured by the counterfeit, imitation or fraud mentioned, has the right to do this, but where the prosecutor is not the owner of the mark, the proceeds from the sale of the confiscated goods must be paid into the public treasury.

Procedure is provided for opposing the registration of trade marks and for the taking of evidence to substantiate the facts alleged by the opponent.

In case of infringement, complaint is made to a competent official who must at once proceed to the place where the counterfeits are to be found. He must seize the counterfeit goods and make an inventory and appraisal thereof. The complainant must within three days thereafter deposit as a guaranty of good



faith and as security for damages, an amount equal to one-third of the value of the goods seized, in default of which, the proceeding shall lapse; and if it shall appear that the seizure was without justification, the complainant shall be liable to a penalty of fifteen to fifty balboas and damages. After this has been done, the official shall report the case to the judge of the proper circuit, who shall determine the rights of the parties, as disclosed by the record.

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## PARAGUAY

This Republic is situated in the central part of South America, is bounded on the north by Bolivia, on the south and east by Brazil, and on the southeast, south and west by Argentine. The area is stated at about 98,000 square miles. The population is estimated to be about 650,000, including 50,000 Indians, a great part of whom are in a savage state.

The country is rich in woods of all kinds; iron, copper and other minerals exist, but do not repay the trouble of extracting them, it is said; cotton is indigenous and the Ramie jute, mapojo and other fibrous plants, the latter growing luxuriously and being used by the natives in the manufacture of clothing.

Sugar growers are as numerous as the agriculturists in the province of Caraguatay, for sugar-cane, tobacco, maize and mandioca are grown by all of them. Nearly all the sugar consumed in this country is imported. The greatest part of the juice of the sugar-cane is employed in distilling spirits.

The imports consist of general provisions, wines and spirits, cotton goods, hardware of all kinds, furniture and clothing, one-third of which comes from Great Britain.

**MONEY**—The peso=100 centavos=4s. (nominal value)=96 cents U. S. The currency of the paper dollar=8s. (about)=\$2.02 U. S.

**WEIGHTS AND MEASURES**—The metric system has been adopted.

### *Law.*

Law of July 6, 1899.

### *Duration.*

Ten years, renewable.

### *What May Be Registered.*

Trade marks are names, stated in a special form, of objects or of persons, emblems, monograms, engravings or prints, seals, vignettes, reliefs, letters and numbers of a particular design, re-

ceptacles or wrappers, and any other signs intended to distinguish manufactured products or articles of commerce. (Art. 1.)

Trade marks can be affixed either upon the receptacles, wrappers, or the articles themselves. (Art. 2.)

#### *What Cannot Be Registered.*

The following shall not be considered as trade marks :

1. Letters, words, names, or titles used or to be used by the Government.
2. The form or shape given to the product by the manufacturer thereof.
3. The color of the product.
4. Words and expressions which have become of general use.
5. The designations usually employed to indicate the nature of the product or the class to which it belongs.
6. Drawings or expressions contrary to good morals.

#### *Requirements.*

Applications for trade marks shall be accompanied by the following papers:

1. Two copies of the trade mark to which the application refers.
2. Description, in duplicate, of the trade mark, if it consists of figures or emblems indicating the class of objects for which the trade mark is intended and whether it applies to manufactured products or articles of commerce.
3. A receipt showing that the amount of the tax established by Article 19 of the present law has been paid in the office of the Treasurer of the Board of Public Credit, with the approval of the Comptroller of the Treasury.
4. A power of attorney executed and legalized in due form of law in case the application is not made personally by the interested party. (Art. 13.)

(Forms for application may be obtained from B. Singer's Offices.)

#### *Mode of Application.*

A record of all the applications filed shall be kept in a book, the pages of which shall be numbered and signed by the Secretary of the Treasury, briefly stating the contents of the application and the date and hour of filing.

This record shall be signed by the President of the Board of Public Credit (or in his absence by another official of the Board), the Secretary, and the applicant, and the latter shall be given, if he so desires, a certified copy thereof, written on a sheet of 50-cent stamped paper. (Art. 14.)

Preference for the ownership of a trade mark shall be gov-

erned by the day and hour on which the application was filed. (Art. 15.)

A certificate of trade mark to be issued by the Bureau of Patents shall consist of a certified copy of the decree by which it was granted, accompanied by a duplicate of the description and the drawings. The certificate shall be issued in the name of the nation, and shall be authorized by the signatures of the President, and Secretary of the Board of Public Credit, and with the seal of the Board. (Art. 16.)

An appeal may be taken to the Secretary of the Treasury within the period of ten days, against the decision of the Board of Public Credit denying the ownership of a trade mark, and the Secretary of the Treasury shall affirm or repeal the decision after hearing the Solicitor-General. (Art. 17.)

The Board of Public Credit shall keep a book in which all concessions of trade marks shall be inscribed in their regular order; and the President of the Board shall send every three months to the Secretary of the Treasury a statement of the certificates granted and denied, giving in each case the respective dates. These statements shall be published in the newspapers. (Art. 18.)

A tax or fee of \$50.00 shall be paid for the registration of all trade marks and the certificates thereof.

For any certified copy of the said certificates which may be desired thereafter an additional fee of \$5.00 shall be paid, this fee not including the value of the stamped paper, which shall be in this case one dollar for the first folio and twenty-five cents for each additional one. (Art. 19.)

The trade marks for which certificates have been issued shall be kept in the archives of the Board of Public Credit. (Art. 20.)

#### *Assignment.*

The sale or transfer of the establishment where the article is produced carries with it the trade mark, if not provided otherwise. The assignee shall have the right to use the trade mark, even if consisting of the name of the assignor, or of someone else, as freely as the assignor himself might personally have done, with no other restrictions than those expressly set forth in the deed of sale or assignment. (Art. 8.)

The transfer of a trade mark shall be recorded at the office where it is registered; otherwise the right to use it shall not be conveyed to the purchaser or assignee. (Art. 9.)

Marking Goods: "Marca Registrada" or "M. R."

#### *Penalties.*

Fines ranging from \$20 to \$500, and imprisonment from fifteen days to one year, shall be imposed on the following:

1. Those who counterfeit or in any manner alter a trade mark.

2. Those who affix upon their products or articles of commerce the trade mark of some other person.

3. Those who knowingly sell, offer for sale, consent to sell, or circulate articles on which a counterfeited or fraudulent trade mark has been affixed.

4. Those who knowingly sell, offer for sale, or consent to sell, counterfeited trade marks, and those who sell authentic marks without the knowledge of their owner.

5. All those who, with fraudulent intention, affix or cause others to affix, upon merchandise a title or any other false designation relating either to its nature, quality, quantity, number, weight or measure, or the time or country in which it has been manufactured or shipped.

6. Those who knowingly sell, offer for sale, or consent to sell, merchandise bearing the false titles and designations spoken of in the preceding paragraph.

In cases of second offense the penalty shall be doubled.

#### *The Sale of Proprietary Remedies.*

The law of December, 1909, requires that all proprietary remedies shall have the authorization of the National Department of Health as a condition of their sale in the Republic and that they shall have the formula plainly printed upon the labels, which shall disclose the quantity of the active substances contained therein. Upon compliance with the required formalities of the Department of Health, it is provided that authorization for the sale of the medicines will be granted. The procedure, however, for obtaining such authorization does not appear from the regulations. After December, 1909, no medicine, authority for the sale of which has not been previously obtained from the National Department of Health, will be permitted to be introduced through the customs houses of the country. (Bulletin of the Int. Bureau of Am. Reps., August, 1909, p. 468.)

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## PERU

This Republic is bounded on the north by Ecuador, on the south by Chile and Bolivia, and on the east by Brazil. The coast line extends to about 1,500 miles and the area was estimated at upwards of 500,000 square miles. Its population according to an estimate census in 1896 amounted to 4,609,999 inhabitants, exclusive of about 350,000 Indians.

The mountain ranges of the Andes run from end to end of the country at a distance of about 60 miles from the Pacific coast. East of this range the country is of great fertility and produces an abundance of coffee, cotton, sugar, cocoa, copaiba, India-rubber, bark, sarsaparilla and probably the finest grapes in the world. The country is also rich in minerals, gold, silver, lead, quicksilver, copper, coal and nitrates existing in abundance. Salt deposits also exist in vast quantities, said to be inexhaustible, being formed by percolation of the sea water through a porous rock. Very important petroleum beds in the north department of Piura have been discovered and are worked.

The imports consist principally of coals, wheat and dry goods.

**MONEY**—The sol=100 centavos=4s. (nominal value)=96 cents U. S.; real 2s. (about)=48 cents U. S.

**WEIGHTS AND MEASURES**—The metric system.

*Law.*

December 19, 1892.

*Decrees.*

September 5, 1909, August 27, 1909, September 9, 1910, November 10, 1911.

*Term.*

The right of ownership recognized by a registered trade mark shall last ten years, but this time may be extended for another ten years, provided that application to that effect is made at any time within six months before the expiration of the first period, and provided further that all the requisites provided for in the original registration shall be again complied with.

*Who May Apply.*

All persons or industrial corporations have the right to apply for and obtain the official registration of denominations of articles, or names of persons written in some particular form, emblems, monograms, engravings, drawings, seals, vignettes, stamps in relief, letters, and numerals made or written in some special form, casks and wrappings, and in general any kind of sign or mark, by which products of a factory, or articles of one class of trade, may be distinguished from all others.

Establishments or companies, native or foreign, which make application for the registration of trade marks should furnish evidence of their existence by subjoining to the respective application a document which proves it, the former their registration in the mercantile register, and the latter their legal constitution in the country in which they are established. (Decree of Sept. 9, 1910.)

*Registration by Third Parties.*

The Decree of Nov. 10, 1911, prevents and suppresses the abuse of registration by third parties. The Decree reads as follows:

WHEREAS, the protection of Industrial Property has been established in a sufficient manner, as far as it relates to the registration of Marks of Manufacture, thus reducing to a minimum the possible inscription of their imitations or falsifications, it is necessary to protect likewise the Marks of Commerce, the registration of which facilitates, in reality, the inscription as such of true Marks of Manufacture, of which they are not the legitimate proprietors, and

WHEREAS, it is necessary to prevent and suppress this abuse,

THEREFORE BE IT DECREED, that the merchants and manufacturers or their agents who in their own name shall obtain the registration of marks over which they have no dominion, shall lose the right to register thereafter Marks of Manufacture or Commerce, either directly or through a third party; that the Department of Industries shall reject the applications that are found within the provision, and that the mere proof of interests that they may have in any mark, registered after this date, shall be sufficient to annul the registration of the same.

Given at the Government House, in Lima, Nov. 10, 1911.

(Signed) A. B. LEGUIA.

*Marks Not Registrable.*

The following cannot be registered as trade marks:

1. Letters, words, names, or marks used, or to be used, by the Government only. Geographical names are by themselves unregistrable.
2. The form or shape given to the article by its manufacturer.
3. The color of the article.
4. Terms or expressions in general use.
5. Designations usually employed to indicate the nature of the articles or the class to which they belong.
6. Immoral drawings or expressions.

*Priority.*

The priority or preference of the right of ownership of a trade mark shall be governed by the date of the application for its registration.

*Documents Required.*

Power of attorney in Spanish, attested by a Notary Public, and legalized by a Peruvian Consul; a clear description of the

mark, so that the translation shall agree with the English description, and in the case of renewals, an exact copy of the original description; eight copies of the mark. (Forms for application may be obtained from B. Singer's Offices.)

#### *Mode of Application.*

To secure the ownership of a trade mark the following is required:

1. To file an application for that purpose in the Department of the Treasury and Commerce, said application to be accompanied by two copies of the mark the registration of which is desired.

2. To file, also in duplicate, a description of the mark when consisting of a figure or emblem.

3. To indicate the class of articles on which the mark is to be placed or affixed and explain whether the placing or affixing of the mark is to identify the products of some particular factory or to differentiate from all others a particular class of articles of commerce.

4. To prove by means of a receipt from the General Treasury that the registration fees have been paid.

5. To exhibit the power of attorney of the manufacturer or merchant who wishes to secure the ownership of the trade mark, if the attorney appears in his name.

The Industrial Division of the Department of the Treasury and Commerce shall keep a register of foreign trade marks, and another or domestic ones. The entries shall set forth succinctly the claims of the applicants, and the day and hour on which the applications are filed. Each entry shall be signed by the head of the office, the secretary or clerk in charge of the matter, and the applicant himself. The applicant shall be provided, at no other expense than the cost of the stamped paper, with a copy of the entry. The registration books shall be paginated, and the initials or signature of the Secretary of the Treasury shall be affixed to each one of their folios.

The trade-marks shall be properly classified and preserved in the archives of the registration office. The originals shall be produced in court in case of litigation. The public shall be permitted to examine them at the office.

The duplicates of descriptions and drawings filed with the applications shall be attached to the certificates of ownership of the trade mark issued by the registration office. Said certificates shall be signed and sealed by the head of the office, in the name of the nation, by authority of the Government.

Reconsideration of orders refusing the registration of a trade mark may be applied for within the period of thirty days subsequent to the date of the order. Applications to that effect

shall be made to the Secretary of the Treasury and Commerce, who, before rendering his decision, shall hear the opinion of the Government Attorney before the Supreme Court.

Protests by interested parties against injuries sustained by them in these matters shall be entered within the period of one year.

#### *Fees.*

The fees to be paid by the interested parties or their representatives shall be as follows:

For the registration of a foreign trade mark or name 100 silver sols.

For the registration of a transfer and the certificate thereof, 50 sols.

For the first certificate of registration, 40 sols; for each extra copy of the same, 20 sols.

#### *Assignment.*

The ownership of trade marks passes to the heirs, and is transferable by contract or testamentary disposition.

It is to be understood that the sale or transfer of the factory or establishment which owns and uses a trade mark carries with it, if nothing is provided to the contrary, the transfer of ownership of the mark itself.

Transfers shall be recorded at the office where the marks are registered.

#### *Fraudulent Appropriation.*

Decree of July 12, 1912.

Where foreigners not residing in Peru fail to register their trade marks, according to Article 9 of the Law of December 19, 1892, foreign merchants residing in Peru often take advantage of this omission and register the trade marks in their own name.

If Article 9 of the law accords priority to the first applicant, the intention of the law has not been to favor this first applicant against the real foreign owner and user of the mark.

Taking into consideration the financial interest of Peru, and in order not to make the mistake of protecting marks which the law does not have to protect, because they have not been registered in Peru by the real proprietors, and by this fact, to annul in practice the very institution of filing of marks, which is necessary to protect the property,

Be it resolved:

ARTICLE 1. In the case of opposition to a trade mark based on the similarity with another mark not registered, but known to the market (Peruvian), the opponent is required to accompany his act of opposition with an authentic facsimile of the mark to which



it refers, and with a certificate proving the deposit in the fiscal treasury of two Peruvian pounds, and five soles, which will serve to effect the registration for him of the authentic mark in the ninety days starting from the demand of the opposition.

ART. 2. If in the delay of ninety days to which the preceding article refers, the regular registration has not been applied for in due form and in conformity with Articles 4 and 10 of the Decrees of July 9th and September 10th, 1909, the opponent will lose the right to the sum deposited, and the application against which he has made opposition will be carried out.

ART. 3. If the opponent obtains the registration of his mark, the first applicant will lose (by right of fine) the amount of fees which he has lodged, and he will be prohibited, moreover, for the future, from presenting new applications for registration in conformity with the Decree of Nov. 10th, 1911.

*Designation of Consuls Authorized to Receive Applications for Registration.*

Lima, August 27, 1909.

Taking into consideration:

That it is necessary to designate the Consuls of the Republic who are authorized to receive applications for registration of trade marks, in accordance with the decree of even date;

It is resolved, to designate, in order to establish this service, the Consuls of the Republic in London, Liverpool, Glasgow, Hamburg, Antwerp, Paris, Havre, Barcelona, Geneva, New York and Buenos Aires, to whom the Department of Fomento shall transmit instructions for the better execution of the said decree.

Record this, communicate it, and publish it.

Signature of His Excellency.

(Signed) D. MATTO.

Lima, September 10, 1909.

Taking into consideration:

That the Consulate of the Republic in Bremen, Germany, by reason of the industrial importance of the zone which it serves and that of the port in which it is established, may be equipped for the service referred to in the decree of August 27th last, relative to the registration of trade marks:

It has been resolved, to appoint the Consulate of the Republic in Bremen for the purpose of executing the above mentioned decree of August 27th last.

Record this, communicate it, and publish it.

Signature of His Excellency.

(Signed) D. MATTO.

The filing of applications through consular offices is unsatisfactory; it delays the registration in an unnecessary manner.

*Law in Force in Peru to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

There are no laws to prevent the sale or importation of goods whose country of origin may have been falsely indicated. Consular invoices showing country of origin are required for all imported goods. There is no obligation to mark imported goods with an indication of their place of origin.

Marking Goods: "Marca Registrada" or "M. R."

*Penalties.*

ART. 23. Infringements of trade marks shall be punished with fines ranging from 25 to 500 sols, or with imprisonment from forty days to six months. The following shall be guilty of infringement:

First. Those who counterfeit or in any way adulterate trade marks.

Second. Those who affix, upon articles or their own fabrication, trade marks belonging to others.

Third. Those who knowingly sell, offer for sale, accept the sale, or consent to the sale or circulation of articles stamped with counterfeited marks, or with marks fraudulently used.

Fourth. Those who knowingly sell, offer for sale, or accept the sale of counterfeited trade marks, and even authentic ones, when done without the consent of their lawful owners.

Fifth. Those who, with fraudulent intention, mark or cause others to mark their own articles with false titles, or designations, respecting their nature, quality, quantity, number, weight, measure, or the name of the country of origin.

Sixth. Those who knowingly sell, offer for sale, or accept the sale of articles bearing the false statements to which reference is made in the foregoing paragraph.

ART. 24. In cases of second offense the penalty shall be doubled.

ART. 25. The infringement or usurpation shall be deemed consummated, even if the counterfeited mark is affixed only to one article.

ART. 26. Those who have sold, or keep for sale, articles bearing counterfeited marks, thereby infringing or usurping legitimate rights shall be bound to inform the lawful owner of the mark of the name and address of the person or persons from whom they bought the articles, or who offered to them the sale of the same, and the dates on which the negotiations for this purpose began. Those refusing to furnish this information may be judicially compelled to give it, under penalty of being taken and dealt with as accomplices.

ART. 27. All articles bearing counterfeited or fraudulent marks found in the possession of the infringer or his agents

shall be confiscated and sold. The proceeds of the sale shall be applied to the payment of the costs and of the indemnity established by law. The balance, if any, shall go to the schools of the province where the confiscation was made.

ART. 28. All counterfeited marks found in the possession of the infringer and all instruments and tools used for the counterfeiting shall be destroyed.

ART. 29. The right to criminally prosecute the infringers belongs exclusively to the injured party, but after the proceedings have been started the Attorney for the Government shall join in them. The complainant shall have the right, however, at any time before the rendering of the decision, of withdrawing his complaint and thus ending the case.

ART. 30. Persons injured by the infringement shall have the right to sue the infringers and their accomplices for damages. The decisions shall be published at the expense of the party against which they were rendered. The action expires by limitation three years after the infringement, and one year after the owner of the trade mark became aware of it.

ART. 31. Cases of usurpation of name shall be governed by the same rules as the cases of infringements of trade marks.

#### *Pure Food and Drug Legislation.*

In Peru the faculty of medicine, which is vested with power to legislate in this behalf, has lately issued a decree providing for an examination by a Pharmacy Commission of all preparations of a proprietary nature. These must be submitted, together with the formula, for the purposes of such examination and analysis. The finding of the Commission is given in the shape of a certificate, having obtained which, the owner may then advertise and promote the sale of the preparations throughout the Republic. The decree, we are advised, applies only at present to those proprietary preparations that have not already been introduced to the public, or already invoiced to some purchaser there. The measure is said to be directed against a great number of spurious preparations of worthless character that have found their way upon the market in Peru from local sources, and to have really originated from the pure food legislation of the United States, which received much favorable comment in the Peruvian newspapers at the time of its passage.

#### *Trade Mark Regulations.*

Some important modifications of the regulations for the registration of trade marks under the present statute of Peru, have been enacted. These regulations provide, first, that where application is made for the registration of names, commercial names, portraits, or facsimile signatures which are not those of the

applicant, registration shall be withheld until the person interested shall show the proper authorization of the owners thereof, or of their heirs, to the use of the name, commercial name, portrait or facsimile signature.

Geographical names, as such, are not open to registration, but where application is made for the registration of the names of farms or localities of private ownership, the interested party, by showing the authority of the owner or owners thereof, may be permitted to register. From this it follows, of course, that the names of localities or farms privately owned may be registered by the owners thereof upon proof of such ownership.

The Government has now modified the existing regulations by providing for the classification of goods for purposes of registration, adopting eighty classes as the basis of trade mark registrations, said to be identical with the classification of the Argentine Republic. It is required that registration be hereafter made by classes, although it does not appear that there is any restriction upon the number of classes that may be covered by one registration.

Further modification of the regulations reduces the time for publishing applications from twenty to ten days, requires the furnishing of an electrotype for reproducing the representation of the mark in connection with the publication, and provides for the monthly publication of a list of trade-marks registered, with the representations thereof and a statement of the goods to which they are applied.

#### DECISIONS.

##### *Opposition to Trade Mark Registration.*

Upon an application to register a trade mark by Alfred Bird & Sons, Ltd., consisting of the name "Bird's," opposition was made by the firm of Weiss & Co., of Lima, Peru, who claimed that they were the importers of similar goods made by Johnson, Baird & Co., and that their rights would be prejudiced by the registration, by reason, presumably of some alleged similarity of their mark to that sought to be registered. In view, however, of the fact that Weiss & Co. had registered no trade mark, it was held that they had no right to invoke the protection of the law, accorded to owners of registered marks. The opposition was rejected and the application granted.

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A number of decrees in cases of trade mark infringement have been granted in Peru. One of these has to do with a case wherein an infringer had been fined \$500.00 for his failure to comply with the provisions of the decree requiring him to with-

draw the infringing goods from the market. The latest decree was in response to a petition for an additional thirty days within which to retire the goods, the petition alleging that the goods by reason of the shipment of which the fine had been previously imposed were actually shipped within the period of seventy days originally allowed. The decree points out that this period of seventy days was not allowed in order that the infringer might use the infringing mark during that period, but that he might, within that period, cease from using it and there was no reason for abating the fine imposed upon him. However, a further extension of thirty days within which to retire the goods was granted.

The Nugget Polish Co., Ltd., of London, manufacturers of shoe polish, figured in several interesting proceedings for the protection of their trade mark. In the first, they complained of the presence in the customs house of Callao of several thousand tin boxes intended to contain shoe blacking, and which bore their "Nugget" trade mark, and the descriptive matter used therewith upon their boxes. The situation was complicated by the fact that one Portal had registered the word "Nugget" for shoe blacking, and that the Nugget Polish Co., in attempting to register the label that appeared upon the top of their boxes, had been obliged to omit this word and register only the remainder of their label. The result of the complaint made was a decree, finding that the boxes were infringements upon the right of Portal and of the Nugget Polish Co., and that no one had the right to sell blacking in those boxes, within the territory of the Republic. Upon a subsequent application by the Company for an order to prevent the shipment of the boxes from the customs house, it was said that the Government had no authority to make such an order, which was at any rate, quite unnecessary, in view of the fact that the boxes were imported and that the previous decree guaranteed the parties interested against any improper use thereof.

The last development in connection with this mark apparently arose from the fact that Portal was instituting prosecutions against the customers of the Nugget Polish Co. for sale of the "Nugget" goods. It was held that the word "Nugget" having been duly registered to Portal, there was no ground for preventing him from enforcing his rights in the mark; that in the ultimate analysis, the Nugget Co., in opposing him, was now asking for a reversal of the first decree, which had declared that no one had the right to use in the Republic marks which infringed upon the rights of Portal, or the Nugget Company.

Another decree had to do with the right to register the trade mark "Sol" (Sun) accompanied by the figure of a star, the registration being opposed by the registrant of another mark, "La Estrella" (The Star) likewise accompanied by the figure

of a star. It was held that the marks were clearly susceptible of being confused, and that the mark last applied for should not be registered. The decree went even further, forbade the applicant to continue in the use of the mark, called attention to the fact that this was the second time that he had applied to register it with slight variations, and required him within thirty days to withdraw from the market goods bearing these marks.

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Upon examination of the application of Mr. Frederico E. Remy, in which he petitions that the representative of the National Water Company, of Waukesha, Wisconsin, be notified to refrain from using the mark, the label of which is attached on mineral waters which the said company imports into Peru, and it appearing from the particulars gathered:

1st. That in September of 1906 Remy presented himself, applying for the registration of the mark White Rock, with a label on which appeared the words "Apollinaris Ch. Co., L. P.";

2nd. That in the October following Mr. F. W. Bayly also presented himself as attorney for the Apollinaris Company, protesting against the use which Remy attempted to make, on a single article, of the duly registered name of this company, belonging to a spring and applicable only to the water emanating therefrom, not being, therefore, in general use or generic.

3rd. That due to this opposition, after having presented an argument tending to show that the protest of Bayly was not well founded, he substituted on his label these words for those which gave rise to the opposition: "Trade Mark Registered. The White Rock Company, Natural Mineral Water.";

4th. That Remy, when inscribing on his label the name The White Rock Company, did not present a power of attorney from the company of this name, as he ought to have done in order to act for it;

5th. That Remy expressly requested that the registration of the mark should be made under the name "White Rock," written on the label, which he presented in diminutive characters, hardly perceptible, and not under the name "Tikla," which was placed in large red characters across the said label;

6th. That the label used by the National Water Co. of Wisconsin, U. S. A., and presented by Remy, and that registered by him are so similar as to be almost facsimiles.

7th. That the mark White Rock, composed only of these words, has been registered in favor of the American company since November, 1907. And taking into consideration:

1st. That it is a well known fact that neither today, nor when Remy applied for the registration of his mark, with the denomination The White Rock Company, did there exist in Peru any company of this name;

2nd. That in this sense Remy has, unlawfully, made use of the name of a company which does not exist, with prejudice to the foreign company which prepares and ships its waters with the mark White Rock;

3rd. That by the similarity of the labels used by Remy and by the American Company is shown, in one of them, the desire to imitate the other, an imitation which surely has not been accomplished by The National White Rock, a company incorporated since 1906, according to the laws of the State of Wisconsin, U. S. A., after succeeding The White Rock Mineral Spring Company in its rights, as is disclosed by the power of attorney in the case, executed before the proper notary, certified by the Secretary of the City of New York and legalized by the Consul of Peru in the same city:

It is resolved:

1st. That there is no ground for the application of Mr. Federico E. Remy, The National Water Company being, therefore, at liberty to use the mark White Rock to which this proceeding refers, and to register it if it thinks proper.

2nd. Annul the registration of the mark White Rock which, on the 25th of January, 1907, was effected in favor of Mr. Federico E. Remy; and

3rd. Grant to the said Remy, for the sake of equity, the term of six months to withdraw from the market the mineral waters which he manufactures and sells with a label similar to that of The National Water Company; it being understood that said term having expired without his having complied with this resolution, he shall be considered to have incurred the penalties named in Art. 23 of law.

Record this and publish it.

Signature of His Excellency.

ALAYZA PAZ SOLDAN.

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Having examined the petition of Ludowieg & Co., merchants of Lima, in which they ask that the penalties named in Art. 23 of the law of December 19, 1892, be inflicted upon J. A. Estremadoyro, prop., of the pharmacy located in Melchormalo St., 144, and upon Mariano Hermoza, domiciled in Delecalzas St., 124, also of Lima, for the infringement, which they have discovered and complain against, of the Florida water of Murray and Lanman, the trade mark for which they had registered in the name of Lanman and Kemp, of New York, as their attorneys:

Having examined also the authentic copies of the declarations made by the defendants in the police office, from which it appears that Hermoza has confessed that he manufactured the product denounced as an infringement and sold it to Estremadoyro, who in his turn declared that he bought it from the former for the purpose of putting it before the public:

And taking into consideration:

1st. That to consummate the fraud the accused have made use of the genuine wrappers, labels, and circulars in that they have imitated the genuine ones and forged the firm name of the proprietors of the mark;

2nd. That the Florida water mark which is used by Lanman & Kemp of New York, was registered in July 1894, and the registration renewed in August of 1904; this firm being, therefore, in possession of the right accorded by the said law of December 19, 1892; a right which the Government recognized and was obliged to protect by issuing a certificate of property in the said mark;

3rd. That the acts committed by Hermoza and Estremadoyro and of which complaint is made by Ludowieg & Co., are provided for in paragraphs 1 and 3 of Art. 23 of the law on the subject and constitute the offense of falsification of a registered mark.

4th. That the defendants have no right to profit by damaging the interests of the proprietors of the genuine Florida water mark, by selling, under cover of same, a product which is not genuine; nor to place on sale an article which is not what the consumer wishes to obtain;

It is resolved:

In accordance with Article 23 of the law on trade marks to impose upon each one of the defendants, Mr. Mariano Hermoza and Mr. J. A. Estremadoyro, a fine of one hundred pounds Peruvian gold, with the notification that they should withdraw at once from circulating the products which they have in their possession, bearing the imitated mark, and that in case of a repetition, this punishment will be doubled in accordance with Art. 24, and that what is prescribed in Articles 27 and 28 of the same law.

Record this, transmit a copy to the Prefecture of Lima, ordering it to collect the fines imposed, and publish it.

(Signed) MATTO.

(El Comercio, Lima, June 29, 1909.)

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## PHILIPPINE ISLANDS

The Philippine Islands are a group situated in the northern portion of the East Indian Archipelago. They comprise upwards of 2,000 islands and contain an area of 140,000 square miles with a population estimated at 7,638,500. Two of the islands, Luzon in the north of the group and Mindanao in the south, are by far the largest. The general system of intercommunication between the numerous islands of the Philippines is maintained by local steamers under Government supervision.



The principal port and city is Manila in the island of Luzon; the other ports open for trade here are Yloilo, in the island of Panay, and Cebu.

The imports consist principally of cotton goods, rice, iron and steel.

MONEY—1 dollar (100 cents)=to 4s. 2 d.=100 cents U. S.

WEIGHTS AND MEASURES—Metric system.

#### *Laws.*

Rules issued pursuant to Sec. 19 of Act No. 666, passed March 6, 1903, governing the registration of trade marks and trade names, for the execution of said Act.

Amendments Nos. 744 and 803.

#### *Duration.*

A certificate of registry shall remain in force for thirty years from its date, except in cases where the trade mark is claimed for, and applied to, articles not manufactured in this country, and in which it receives protection under the laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this Act at the time that such trade mark ceases to be exclusive property elsewhere. At any time during the six months prior to the expiration of the term of thirty years, such registration may be renewed on the same terms and for a like period.

#### *Renewal.*

Upon the expiration of the term of thirty years the trade mark shall be considered cancelled ipso facto, unless application be made for its renewal prior to the expiration of said time. Provided, however, that in the event of such renewal not being requested, because of the said trade mark being no longer used, it shall be considered abandoned and shall become public property so that any person may make application for its use.

#### *What Is a Trade Mark.*

A trade mark is a name, emblem, sign, or device employed by any person, firm or corporation, to designate the goods dealt in or manufactured by such person, firm or corporation, for the purpose of enabling the public to recognize such goods and manufacture, and to distinguish them from the goods and manufactures of others.

#### *Marks Not Registrable.*

National arms, escutcheons, blazons or emblems of foreign States or Nations will not be admitted as trade marks without the express consent of the Governments concerned; neither will

the portrait of any living person, without his consent, or of a deceased person, without the consent of his heirs, be admitted: Provided, however, that portraits of heads of States and of famous men shall be considered as exempt from this provision.

*Who May Apply.*

Anyone who produces or deals in merchandise of any kind by actual use thereof in trade may appropriate to his exclusive use a trade mark, not so appropriated by another, to designate the origin or ownership thereof; Provided, that a designation or part of a designation which relates only to the name, quality, or description of the merchandise or geographical place of its production or origin, can not be the subject of a trade mark.

*Mode of Application and Procedure.*

Any person, firm or corporation desiring to register a trade mark or trade name for his or its exclusive use, shall make application therefor, in writing, to the Chief of the Division of Archives, Patents, Copyrights and Trade Marks, who will note on the margin thereof the day, hour and minute when the same was filed.

The application shall be made out in the manner set forth in Form No. 1, and shall be accompanied by five copies of the trade mark to be registered which shall be drawn, printed, lithographed, or stamped in black or in colors as actually used, together with a detailed description, stating the length of time during which the trade mark has been used, or the time when the applicant wishes to begin using it, in accordance with Form No. 2, which shall be signed in the presence of two witnesses; and shall also be accompanied by the affidavit of the applicant or his attorney made, in accordance with Form No. 3, before a Notary Public, setting forth that he has the exclusive right to the use of the said trade mark.

Said application, description and affidavit may be made out in English or Spanish.

Applications, descriptions, affidavits or copies of trade marks containing amendments or erasures will not be admitted.

The size of the paper to be used for the above shall be 8 inches wide by 13 inches long.

Upon the receipt of the application and accompanying papers the Chief of the Division of Archives, Patents, Copyrights and Trade Marks will issue the proper receipt to the applicant; and order the comparison of the trade mark with those already registered, in order to ascertain whether it infringes upon any of them.

No trade mark or trade name will be admitted or registered

if it has a resemblance to or similarity with any other registered or known trade mark or trade name.

If the trade mark can be admitted notice in writing thereof will be sent to the applicant or his attorney, who shall pay to the Division of Archives, Patents, Copyrights and Trade Marks the fees fixed for the issuance of the proper certificate of registration, and the chief of the aforesaid division will issue the proper receipt for the amount paid.

The certificate issued will state the date on which the trade mark was registered, its registration number and the kind of business in which the said trade mark is to be used. Another certificate will accompany it, setting forth that the legal fees have been paid and that the party concerned has complied with all the rules and provisions of the law; the certificate first mentioned shall bear a 20 centavo internal revenue stamp, which shall be paid for by the party concerned or his attorney and will be cancelled with the stamp of this division.

Said certificates will moreover be sealed with the metal seal of this division and will have attached thereto one of the facsimile copies of the trade mark, a copy of the description thereof, and the affidavit of the party concerned or of his attorney; and the same shall be prima facie evidence of the right to use such mark.

All the letters in the case of each distinct inquiry or request, shall be addressed separately to the Chief of the Division of Archives, Patents, Copyrights and Trade Marks, and all remittances by postal money order, check or draft, shall be made payable to his order.

The action of this office will be based on written communications, and no oral promise, stipulation, or agreement about which there shall be any divergence or doubt shall be considered.

No person shall be allowed to revise or inspect the registry books of trade marks without the permission of the chief of this division nor will reply be made to any question asked for the purpose of ascertaining whether certain trade marks have been registered or not, the name of their owners, or the use to which they are to be applied.

Nor will explanations be given as to the interpretation or application of the provisions of the law to which these regulations are subject.

The application for the registration of a trade mark shall be made personally or in writing, by the owner, his attorney, or by his duly authorized representative.

Certificates will be delivered or sent by this office to the owner or the person representing the same.

After notice of the admission of a trade mark has been sent, no amendment of any kind will be allowed in the application, in the facsimile of the mark, or in the description thereof.

No change whatsoever will be allowed in the design of a trade mark, either as regards the grouping of the figures of the design or the change of their relative positions, and the description must be restricted to the facsimile of the mark: Provided, however, that in the use of the trade mark the size most suitable may be adopted.

Any partial or total amendment or modification of a trade mark shall annul the same, and the owner will be obliged to apply for a new registry, in order to obtain a new certificate, which shall be valid for thirty years, counting from its date, and for which he shall pay the fees prescribed.

Trade marks not registered will not be returned to their owners, who will be notified of their rejection with the reasons therefor, and said marks will be filed in this office.

Doubts or questions arising with regard to the right of ownership or use of a trade mark, shall be heard and decided by the courts of justice.

#### *Documents Required.*

One drawing; letter of advice; statement; declaration; and power of attorney. (Forms for application may be obtained from B. Singer's Offices.)

#### *Assignments.*

Assignments of the right to use a trade mark must be made before a Notary Public, and it shall be the duty of the party concerned to file with this division the proper instrument making the assignment of the trade mark in duplicate, for entry in the registry book. For such registration and filing of the duplicate of said instrument a fee of 2 pesos will be charged if the instrument is of less than 300 words, 4 pesos if over 300, 6 pesos if 1,000 or more. The original will be returned to the party concerned with a note of its entry; unless he should prefer a new certificate, in which case he shall make application therefor in the prescribed manner, annexing to his application the instrument relative to said assignment, said certificate being then issued.

#### *Fees.*

Twenty-five dollars in money of the United States.

#### *Offenses and Penalties.*

The ownership or possession of a trade mark heretofore or hereafter appropriated shall be recognized and protected in the same manner and to the same extent as are other property rights known to the law. To this end any person entitled to the exclusive use of a trade mark to designate the origin or ownership of goods he has made or deals in, may recover damages in a civil

action from any person who has sold goods of a similar kind, bearing such trade mark, and the measure of the damages suffered, at the option of the complaining party, shall be either the reasonable profit which the complaining party would have made had the defendant not sold the goods with the trade mark aforesaid, or the profit which the defendant actually made out of the sale of the goods with the trade mark, and in cases where actual intent to mislead the public or to defraud the owner of the trade mark shall be shown, in the discretion of the court, the damages may be doubled. The complaining party upon proper showing may have a preliminary injunction restraining the defendant temporarily from the use of the trade mark pending the hearing, to be granted or dissolved in the manner provided in the code of civil procedure, and such injunction, upon final hearing, if the complainant's property in the trade mark and the defendant's violation thereof shall be fully established, shall be made perpetual, and this injunction shall be part of the judgment for damages to be rendered in the same cause as above provided. (Sec. 3.)

In order to justify recovery for violation of trade mark rights in the preceding section defined, it shall not be necessary to show that the trade marks have been registered under the royal decree of 1888, providing for registration of trade marks in the Philippine Islands, in force during the Spanish sovereignty in these Islands, nor shall it be necessary to show that the trade mark has been registered under this Act. It shall be sufficient to invoke protection of his property in a trade mark, if the party complaining shall prove that he has used the trade mark claimed by him upon his goods a sufficient length of time so that the use of the trade mark by another would be an injury to him and calculated to deceive the public into the belief that the goods of that other were the goods manufactured or dealt in by the complaining party. (Sec. 4.)

A trade name is the name, device, or mark by which is intended to be distinguished from that of others, the business, profession, trade or occupation in which one may be engaged and in which goods are manufactured or sold to the public, work is done for the public, or professional services are rendered to the public. It is not essential that the trade name should appear on the goods manufactured or dealt in by the person owning or using the same. It is sufficient if the trade name is used by way of advertisements, signs over the place of business, upon letter-heads and in other ways to furnish to the public a method of distinguishing the business, trade, or occupation of the person owning and using such name. Property in trade names shall be as fully protected as property in a trade mark by the civil remedies provided in Section 3 of this Act for the protection of property in trade marks. (Sec. 5.)

Any person, who, with intent to defraud the public or the owner of a trade mark or trade name, shall use the trade mark of another on his goods offered for sale, or the trade name of another in his business, occupation or profession, and any person who, knowing that a trade mark has been fraudulently used on goods with the intent aforesaid, shall sell such goods or offer the same for sale and any person who shall knowingly aid or abet another in such fraudulent use of a trade mark or trade name, shall be punished by a fine of not exceeding \$2,500, or by imprisonment not exceeding three years, or both, in the discretion of the court. Any person knowing the purposes for which such trade mark or trade name is to be used, and that it is the property of one person, prints, lithographs, or in any way reproduces such trade mark or trade name, or a colorable imitation thereof, for another person, to enable that other person fraudulently to use such trade mark or trade name in the deception of the public and the defrauding of the real owner of the trade mark or trade name, shall be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding eighteen months, or both, in the discretion of the court. (Sec. 6.)

Any person who in selling his goods shall give them the general appearance of goods of another manufacturer or dealer, either in the wrapping of the packages in which they are contained, or in the device or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer, and who clothes the goods with such appearance for the purpose of deceiving the public and defrauding another of his legitimate trade, or any subsequent vender of such goods or any agent of any vender engaged in selling such goods with a like purpose, shall be guilty of unfair competition, and shall be liable to an action for damages in which the measure shall be the same as that provided for a violation of trade mark rights, together with discretionary power in the court to impose double damages, if the circumstances call for the same. The injured party may also have a remedy by injunction similar to that provided for in cases of violation of trade marks. This section applies in cases where the deceitful appearance of the goods, misleading as to origin or ownership, is effected not by means of technical trade marks, emblems, signs, or devices, but by the general appearance of the package containing the goods, or by the devices or words thereon, even though such packages, devices or words are not by law capable of appropriation as trade marks; and in order that the action shall lie under this section, actual intent to deceive the public and defraud a competitor shall affirmatively appear on the part of the person sought to be made liable, but such intent may be inferred from similarity in the appearance of

the goods as packed or offered for sale to those of the complaining party. (Sec. 7.)

Any person guilty of unfair competition, as defined in the preceding section, in addition to the civil remedies to which he may be subject, shall also be liable criminally, in case of conviction for the same, to a fine of not exceeding \$2,000 or imprisonment not exceeding two years, or both, in the discretion of the court. (Sec. 8.)

No action, or suit, or criminal prosecution shall be maintained under the provisions of this Act in any case where the violation of the trade mark or trade name or the unfair competition complained of has been in any unlawful business, or with respect to any article trade in which is unlawful, or is against public policy, or in any case where the trade mark, trade name, or the indication of origin, ownership, or manufacture have been used by the complaining and injured party for the purpose of himself deceiving the public with respect to the character of the merchandise sold by him or of the business or profession or occupation carried on by him. (Sec. 9.)

Marking Goods: "Trade Mark Registered."

#### *Food and Drugs Law.*

The Food and Drugs Act (No. 1655) is modeled after the United States law, and as soon as due notice of an amendment to the United States law is received, an amendment analogous in substance, is made in the Philippine law. This procedure tends to uniformity, and all products that satisfy the tests required in the United States should meet the requirements there.

Under the Philippine law all importations of food and drugs are subject to examination and analysis, and any consignment found improperly labeled or adulterated may be barred from entry.

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## PORTO RICO

The population of the island of Porto Rico in 1911 was estimated at 1,118,200. The area of this island is 3,668 square miles.

The imports consist of cotton, woolen, and silk goods, rice, flour, codfish and provisions of every sort.

#### *Law.*

Sections 213 to 222 of the Political Code of Porto Rico, approved March 1, 1902.

*Duration.*

A certificate of registry shall remain in force for twenty years from its date, except in cases where the trade mark or design is claimed for and applied to articles not manufactured in Porto Rico, and in which it receives protection under the laws where manufactured for a shorter period, in which case it shall cease to have any force in Porto Rico by virtue of this Act at the time that such trade mark or design ceases to be exclusive property elsewhere. At any time during six months prior to the expiration of the period of twenty years such registration may be renewed on the same terms and for a like period.

*Who May Apply.*

The owners of trade marks or commercial designs used in commerce in Porto Rico, provided such owners shall be domiciled in Porto Rico or the United States, or located in any foreign country which affords similar privileges to citizens of the United States or Porto Rico, may obtain registration of trade marks or commercial designs.

*Mode of Application and Procedure.*

A facsimile of the trade mark must be attached to the statement, and two additional facsimiles should accompany the application. A statement specifying the name, principal place of business and citizenship of the party applying must be filed in the office of the Secretary of Porto Rico; together with a statement of the class of merchandise, and the particular description of goods comprised in such class to which the particular trade mark or design has been appropriated; a description of the trade mark or design itself with facsimiles thereof; and a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the trade mark or design has been used.

The application prescribed, in order to create any right whatever in favor of the party filing it, must be accompanied by a written declaration verified by the person, or by a member of a firm or by an officer of a corporation applying, to the effect that such party has at the time a right to the use of the trade mark or design sought to be registered, and that no other persons, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; and that the description and facsimiles presented for registry truly represent the trade mark or design sought to be registered.

The time of the receipt of such application shall be noted and



recorded. But no alleged trade mark or design shall be registered unless the same appear to be lawfully used as such by the applicant, nor which is merely the name of the applicant; nor which is identical with a registered or known trade mark or design owned by another and appropriated to the same class of merchandise or which so nearly resembles the lawful trade mark or design of another as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers. In an application for registration the Secretary of Porto Rico shall decide the presumptive lawfulness of claim to the alleged trade mark or design.

#### *Fees.*

The fee for registration of each trade mark is \$10.00 and for recording 25 cents for each one hundred words. For the certified copy attached to the certificate of registration 20 cents for each one hundred words and for the certificate \$1.00.

#### *Requirements.*

One drawing; letter of advice; statement; declaration; power of attorney; and six facsimiles of the trade mark. (Forms for application may be obtained from B. Singer's Offices.)

#### *Offenses and Penalties.*

Every person who willfully reproduces, copies, imitates, forges, or counterfeits, or procures to be reproduced, copied, imitated, forged or counterfeited, any trade mark usually affixed by any person to his goods, which has been duly recorded in the office of the Secretary of Porto Rico or with the Commissioner of Patents in the United States Patent Office, or any label or brand, composed in whole or in part of a reproduction of said trade mark, who affixes the same to goods of essentially the same descriptive properties and qualities as those referred to in the registration of such trade mark, with intent to pass off, or to assist other persons to pass off, any goods to which such reproduced, copied, imitated, forged or counterfeited trade mark, or label, or brand is affixed, or intended to be affixed, as the goods of the person, firm, company, or corporation owning the said trade mark, is guilty of a misdemeanor.

Every person who sells or keeps for sale, or manufactures, or prepares for the purpose of sale, any goods upon, or to which any reproduced, copied, imitated, forged or counterfeited trade mark or label or brand, composed in whole or in part of such reproduced, copied, imitated, forged or counterfeited mark has been fixed, after such trade mark has been recorded in the office of the Secretary of Porto Rico, or with the Commissioner of Patents in the United States Patent Office, intending to represent such goods as the genuine goods of the person, firm, com-

pany, or corporation, owning the said trade mark, knowing the same to be reproduced, copied, imitated, forged, or counterfeited, is guilty of a misdemeanor.

The phrases "forged trade mark" and "counterfeited trade mark" or their equivalents, include every alteration or imitation of any trade mark so resembling the original as to be likely to deceive.

The phrase "trade mark" as used in the three preceding sections includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

Every person who has in his possession, or who uses any cask, bottle, vessel, case, cover, label, brand, or other thing bearing, or having in any way connected with it, the trade mark of another, which has been duly recorded in the office of the Secretary of Porto Rico, or with the Commissioner of Patents in the United States Patent Office, or the trade name of another, for the purpose of disposing of any article other than that which such cask, bottle, vessel, case, cover, label, brand, or other thing originally contained, or is connected with by the owner of such trade mark or trade name, with intent to deceive or defraud, is guilty of misdemeanor.

Every person who wilfully sells, or trafficks in any cask, keg, bottle, vessel, siphon, can, case, or other package bearing the duly filed trade mark or name of another, printed, branded, stamped, engraved, etched, blown, or otherwise attached or produced thereon, or refills any such cask, keg, bottle, vessel, siphon, can, case, or other package with intent to defraud the owner thereof, without the consent of the owner thereof, or unless the same shall have been purchased from the owner thereof, is guilty of misdemeanor.

Every person who shall wilfully deface, erase, obliterate, cover up, or otherwise remove, destroy, or cancel the duly filed trade mark or name of another, printed, branded, stamped, engraved, etched, blown, impressed, or otherwise attached to, or produced upon any cask, keg, bottle, vessel, siphon, can, case, or other package, or refilling such cask, keg, bottle, vessel, siphon, can, case or other package, with intent to defraud the owner thereof, without the consent of the owner, or unless the same shall have been purchased from the owner, is guilty of misdemeanor.

Marking Goods: "Trade Mark Registered."

#### *Assignment.*

Same rules and forms as in the United States.

## PORTUGAL

The area of the kingdom of Portugal on the Continent, is 34,254 square miles. The population in 1911 was estimated to be 5,019,267. The Azores have 922 square miles and a population of about 257,300; Madeira, 314 square miles and a population of about 152,000.

It is difficult to say what proportion of the total area of the country is under cork forests, more especially as these are all in the hands of private individuals, the state forests being very few in number in Portugal.

The manufactures of Portugal are unimportant, being, in fact, practically confined to the national market, including Brazil, and consist principally of cotton and woolen goods, boats, iron, implements, etc.

**MONEY**—The milreis (1,000 reis)=4s. 5d.= \$1.06.

**WEIGHTS AND MEASURES**—The metric system.

### *Law.*

Laws of December 15, 1894; Decree of March 16, 1905.

### *Territory Covered.*

Trade marks cover only Portugal and the Azores and Madeira Islands, but the registration can be extended by a subsequent application to the following colonies: Cape Verde Islands, Portuguese Guinea, St. Thomas' and Prince's Island, Angola, Mozambique, including Delagoa Bay, India (Goa, Damao and Diu), Macau, Timor, and the territories belonging to the Mozambique and Nyassa Companies.

### *Term of Protection*

Trade marks are registered for ten years, but at the expiration of this term they can be renewed indefinitely, provided the application is filed within the last year, accompanied with the original certificate of registration, eight copies of the mark, and a block. Priority can be claimed under the International Convention.

### *Who May Register.*

Portuguese manufacturers, agriculturists and merchants, or foreigners belonging to countries having treaties with Portugal or granting reciprocity to Portuguese subjects. The applicant may be any person, firm, society, company or corporation.

### *Unregistrable.*

Are:—marks offensive to morality or religion; marks containing figures representing the heads of states, members of

the reigning family, blazons, arms or decoration, unless the applicant can prove that he has had granted to him the special permission of the persons to whom the marks refer, or has the right to use such blazons or arms; marks containing the names of individuals, firms, or the names of a collection of individuals which the applicant cannot legitimately use; marks containing drawings of decorations awarded by the Portuguese Government; marks containing drawings of medals or referring to diplomas or honorable mentions to which the applicant has not the right; marks making false indications of origin; and marks which may be confounded with another already registered.

#### *Documents Required.*

1. A full and clear description of the mark, showing the class or classes of goods in connection with which the mark is to be registered, specifying how the mark is to be applied to them, and stating nationality, profession, address and establishments of the applicant.

2. Six copies of the mark, not exceeding ten centimeters square.

3. A power in Portuguese, simply signed by the applicant. Legalization is not necessary.

4. A block not exceeding 100 mm. and having a thickness of 24 mm.

5. An unlegalized official certificate showing registration in the applicant's native country.

#### *Opposition.*

He who shall have first employed a definite trade mark even though he has not deposited and registered it, may still oppose the deposit or registration already demanded or effected by another of a mark identical with his own or liable to be confounded with it.

No opposition can be admitted when six months have expired since the deposit or registry, or when the opponent shall have used his mark more than six months without meanwhile demanding deposit or registry.

The opposition contemplated in the preceding paragraphs is to be made in the form of a protest addressed to the Bureau having charge of deposit and registry; and cancellation and registry shall take place only when the ordinary tribunals in the terms of common law shall have adjudged the application proper.

In Sec. 89 of the trade mark law of Portugal, it is provided that a trade mark application shall be published in the official publication designed for the purpose, and that thereafter a period of three months shall be allowed within which opposition may

be filed by any person who shall deem himself prejudiced by the registration. Upon the filing of such an opposition accompanied by the evidence upon which it rests, the facts shall be examined and the mark accepted or rejected, as justice shall require.

An application having been filed for the registration of a trade mark "Luz do Pharol" as a trade mark, the Colonial Oil Co. filed an opposition upon the ground that it conflicted with a previous registration of their own, to-wit, "Luz do Sol Russo." The application was rejected, but this decision was later reversed upon appeal, it being held that there was no probability of confusion between the two marks, the mere presence in each of the word "Luz" not being such a similarity as would cause them to be mistaken one for the other. (Boletim da Propriedade Ind., 1907, p. 367.)

#### *Modifications.*

Trade marks can be modified by the person or firm who effected the registration and the modification can be registered. The same papers as for original registration are wanted.

#### *Assignments.*

Transfers or sales of Portuguese trade marks can be effected by deeds executed in accordance with the law of the country in which they were signed. When there is no contract to the contrary, it is understood that the mark goes with the industrial or commercial establishment to which it refers. For registering an assignment, the following papers are to be furnished: (a) Deed of sale, translated into Portuguese by a sworn translator and legalized by a Consul of Portugal. (b) Portuguese power of attorney, simply signed by the assignee. (c) Copies of the mark. (d) Full statement of the name, nationality, profession and address of the assignee and place where the industrial or commercial establishment is located, as well as statement of the price of the sale.

#### *Classes of Goods.*

The right of property in a mark is limited to the class of goods for which it has been registered. There are eighty classes. The same mark, used on different goods, shall be considered as separate marks.

#### *Classification.*

##### I. Agricultural Products; Raw Materials.

1. Agricultural and horticultural products, grains, vegetables, flour, raw cotton and other vegetable fibres, seeds, plants.
2. Wood for structural and heating purposes, charcoal, cork and barks.

3. Tars, resins and raw gums, caoutchouc.
4. Live stock.
5. Hides, hair, sea weed, silks and feathers in raw condition.
6. Fish scales, ivory, mother of pearl, corals, whalebone, horns, bones, raw or half finished.
7. Mineral, earths, stones, coal, coke, briquets.

## II. Half-Finished Materials.

8. Metals in bulk, ingots, bars, sheets or plates, wires, junk.
9. Oils, non-edible essences and fats, mineral oils.
10. Prepared leathers and hides, caoutchouc and similar compounds in sheets, threads, tubes, squares and stoppers of cork.
11. Chemical compounds for industry, photography, etc., prepared tanning materials, drugs.
12. Explosives, gun powders, caps, fuses, matches, igniting material, fire-works.
13. Artificial and natural fertilizers, chemical substances for agriculture and horticulture.
14. Soaps for industry and house keeping, compounds for washing, bleaching, cleaning and spot removing purposes.
15. Dyes, mercerizing means.

## III. Tools, Machinery, Conveying Means.

16. Hand tools, tool machinery, sewing machines and their parts, grinding devices.
17. Agricultural machines, farming implements and their parts.
18. Steam engines, and their parts (except locomotives.)
19. Boilers, pipes, barrels and metal tanks.
20. Electricity (machinery and accessories.)
21. Horology, chronometry.
22. Various kinds of machines and apparatus and their parts.
23. Ship-building and accessories.
24. Railroad supplies, stationary and rolling stock.
25. Wheelwright's work, coach-building, farriery, automobiles and bicycles.
26. Saddlery, harness-making, whips, etc.
27. Ropes, cordage, twines of hair or fibres of any kind, wire ropes, driving belts.
28. Fire-arms for war and sport and ammunition therefor.

## IV. Building Material.

29. Lime, plaster, cement, pozzuolana, bricks, tiles and other ceramic products, marble, slate and other finished or half-finished materials.
30. Carpentry, cabinet-making.
31. Metallic structural material.

32. Foundry, lock-smithing, nail manufacturing, screws, chains, paper, fabrics and polishing means.

33. Paints for buildings, varnishes and accessories, waxes, encaustics and glues.

34. Wall paper and substitutes for wall tapestry.

35. Heating devices, ventilating apparatus, elevators for persons and freight.

#### V. Furniture and Housekeeping Materials.

36. Cabinet making, household furniture, frames.

37. Beds, bedding, feathers, downs, wool and sea weed prepared for bedding.

38. Hardware, kitchen furniture, bath apparatus, sprayers, filters and extinguishers.

39. Lighting and heating articles.

40. Glassware, crystals, plate glass, mirrors.

41. Ceramic products, except those destined for structural purposes.

42. Cutlery, sharp instruments, blank weapons.

43. Wooden ware, brushes, brooms, mats, straw mats, ordinary basket work.

#### VI. Threads, Textile Fabrics, Carpets, Tapestry and Garments.

44. Threads and fabrics of wool or hair.

45. Threads and fabrics of silk.

46. Threads and fabrics of hemp, flax, jute and other fibers.

47. Threads and fabrics of cotton.

48. Ready-made garments of all kinds.

49. Lingerie, underwear and housekeeping linen goods.

50. Hat making, fashions, millinery feathers, artificial flowers.

51. Embroidery, trimmings, galloons, buttons, laces, ribbons.

52. Hosiery, gloves, notions, corsets, needles and pins.

53. Shoes of all kinds, blacking and greases for leather.

54. Walking sticks, umbrellas, parasols, traveling articles.

55. Tents, wagon blankets, oil cloth, cloth covered with caoutchouc, linoleum.

#### VII. Fancy Goods.

56. Jewelry, gold and silver goods, genuine or imitation.

57. Leather articles, fans, toys, fine basket work.

58. Perfumery, soaps, combs, sponges and other toilet accessories.

59. Smoking accessories, cigarette papers, prepared tobacco.

60. Toys, play things, playing cards, articles of fishing, hunting and sport.

#### VIII. Foodstuffs.

61. Meats, fish, poultry and eggs, game in fresh condition.

62. Preserved food, salt meats.

- 63. Fresh or dry vegetables and fruits.
- 64. Butter, cheese, edible greases and oils, vinegars, salts, condiments, yeast.
- 65. Bread, dough products.
- 66. Pastry, confectionery, chocolates, cocoa, sugars, honey, jams.
- 67. Colonial goods, spices, teas, coffees and substitutes.
- 68. Wines, sparkling wines, cider, beers, alcohols and brandies, and other alcohol-containing liquors.
- 69. Mineral and gas-containing waters, lemonades, syrups.
- 70. Various groceries, candles, tapers, night lamps and wicks.
- 71. Foods for animals.

#### IX. Instruction, Sciences, Fine Arts, Etc.

- 72. Prints, papers and card boards, stationery, books, articles for offices, writing, printing and marking inks, book bindings.
- 73. Fine colors and accessories for painting.
- 74. Artistic and ornamental objects, sculpture, paintings, engravings or lithographs, etc., photography, printing type.
- 75. Scientific, optical and photographic instruments, standard weights and measures, scales.
- 76. Any kind of musical instruments.
- 77. Materials for instruction, models, maps, charts, school furniture, gymnastical apparatus.
- 78. Instruments and apparatus for surgery, medicine, pharmacy and orthopedy.
- 79. Pharmaceutic products, bandages, disinfectants, veterinary products.
- 80. Diverse articles, not included in the preceding classes or which are not specified.

#### *Penalties.*

Imprisonment from one to six months, and in every case a fine of from 10,000 to 100,000 reis, or the latter penalty, only, may be imposed upon,

- 1st. Those who counterfeit a trade mark;
- 2nd. Those who use the mark of another or a counterfeit mark; and
- 3rd. Those who, with evil intent sell, or offer for sale articles bearing a counterfeit mark, or one fraudulently employed or appropriated.

Counterfeiting a trade mark consists in its entire and fraudulent imitation by whatever means. (Art. 13.)

Imprisonment from one to three months and a fine of from 5,000 to 50,000 reis, or the latter penalty only, may be imposed upon,

- 1st. Those who simulate a trade mark so as to deceive purchasers;



2nd. Those who fraudulently use a trade mark so simulating the mark of another as to be confounded with it;

3rd. Those who, with evil intent, sell or offer for sale goods marked as indicated in this article.

Simulation in the sense of the law does not require a complete likeness between the marks. It is enough if the simulating marks contain elements tending to deceive purchasers as to the nature and origin of the goods. (Art. 14.)

The provisions of Art. 22 of the Penal Code apply to those who counterfeit the Government stamp, and those who fraudulently use counterfeit stamps.

The same penalties are incurred by those who with evil intent sell or expose for sale goods bearing counterfeit stamps. (Art. 15.)

In case of the repetition of the offense the penalties prescribed in Articles 13, 14, and 15 shall be doubled.

It is a repetition when the delinquent having been condemned by the final judgment of a tribunal for an offense contemplated in this law, commits an offense of the same nature within five years from the judgment.

There is no repetition if the first offense has been pardoned or the offender rehabilitated.

#### *Suits and Jurisdiction.*

Owners of trade marks who consider themselves injured by any of the offenses contemplated and punishable by Articles 13, 14 and 15 may bring criminal action or sue for damages.

The two actions cannot be instituted cumulatively. (Art. 17.)

It shall be the duty of the public prosecutor, first, to prosecute those who commit the offenses contemplated in Articles 13 and 15; second, to intervene in suits instituted by owners for the application of the penalties established by Art. 14. Nevertheless, the provisions of Art. 27 of the Penal Code will be enforced. (Art. 18.)

The civil and commercial courts have exclusive jurisdiction, first, of suits for damages under Articles 13 and 15; second, of actions to determine the facts indicated in Art. 14, and the proportionate indemnity.

In localities where tribunals of commerce are established these shall be competent to take cognizance of the suits referred to in this Article when they have reference to commercial marks. The civil courts are alone competent in suits relative to manufacturer's marks, and to commercial marks in localities where there are no tribunals of commerce.

Criminal courts take exclusive cognizance, first, of actions to determine facts and apply the penalties referred to in Articles 13 and 15; second, of actions to apply the penalties prescribed in Art. 14. (Art. 19.)

Such of these actions as are not based on Art. 15 shall be treated as for misdemeanors. (Art. 20.)

The actions named under No. 1 of Art. 9 can only be brought by virtue of a judgment after final decision of the criminal tribunal competent by No. 1 of Art. 20, declaring pertinent and established the accusation founded on one of the acts set forth in Articles 13 and 15.

In this case the judgment of the criminal court completely establishes the existence and exactness of the fact alleged, and the civil or commercial court has only to decide if it is a case for damages, and to fix the amount. (Art. 21.)

The actions referred to in Art. 20 can only be brought when by a final decision of either a criminal or civil court in conformity with Art. 19, No. 2 and paragraph 1, one of the facts recited in Art. 14 has been established. In that case the judgment of the civil or commercial court establishes completely the existence and the exactness of the allegation, and the criminal court has only to fix the penalty. (Art. 22.)

For suits under this law either the plaintiff's or defendant's tribunal is competent, at the election of the plaintiff. (Art. 23.)

When there is reason to suspect the existence of any of the conditions named in Articles 13 and 15, the parties concerned and the public prosecutor may demand before the competent tribunals and in the terms prescribed by law the attachment of the articles improperly and fraudulently marked or stamped, as well as the appliances used in the imitation of the marks or in counterfeiting the marks or stamps. (Art. 24.)

Sec. 1. If the attachment is ordered on the demand of interested parties, they shall give bond for damages and costs.

Sec. 2. The attachment shall become void if within thirty days the complainant does not bring suit in conformity with this law.

The articles attached shall serve as security for payment of the penalty due the Treasury, when the attachment has been at the instance of the public prosecutor, or for payment of damages and costs if it has been at the instance of interested parties. (Art. 25.)

As far as possible without injury to the merchandise stamps found false, and counterfeit and simulative marks and those not in conformity with this law, and the appliances specially intended for the fabrication of such stamps and marks, shall be put out of use. (Art. 26.)

The court which shall determine the existence and exactness of the acts specified in Articles 13, 14 and 15, may order that the judgment be published in the newspapers it may designate

and affixed for a week to the door of the delinquent's place of business. (Art. 27.)

### *Priority.*

According to the provisions of the Portuguese law, priority in complying with the provisions of the statute regarding registration is the test of title to a trade mark, and priority is determined by the relative dates of filing applications to register. Application was filed on Sept. 7 for the registration of a trade mark in Portugal. Registration of the same mark was effected in Portugal by another through the International Bureau at Berne under date of Oct. 20 of the same year. The Portuguese application was subsequently granted. It was held that the later registration took precedence, because of the priority in filing the application upon which it was granted.

The trade mark "Reka" has been held by a Portuguese court to be an infringement upon the trade mark "Eureka" for the same goods. The registration of the latter trade mark will prevent the subsequent registration of the former. Considering, the court says, that the average purchaser of the goods on which the mark is used is uneducated and has not the discernment to distinguish minutely between similar marks, the two words are likely to be confused, one with the other.

Application being made for registration as a trade mark of a royal crown, the application was rejected because, it being an emblem of royalty, the right to the use thereof could not be acquired by a private individual. The court, however, holds that, inasmuch as royalty has been abolished in Portugal by the establishment of the Republic, no reason now exists for denying the registration. (Boletim da Propriedade Ind., 1911, pp. 5, 81.)

### *Conflicting Trade Marks.*

A trade mark having been registered containing the image and name of Santo Antonio, followed by the name "Romariz," it has been held improper by the Portuguese court to allow the registration of another mark containing the same features and name, notwithstanding there is a variety of differences between the marks as used, when they are compared, one with the other. The court declared itself unable to avoid the conclusion that the similarities were such as would cause a harmful confusion in the public mind, which it is the purpose of the trade mark law to avoid. Absolute identity is not required, that registration may be refused. It is enough that the differences are not such as to remove the possibility of confusion between the goods. (Boletim da Propriedade Ind., 1910, p. 387.)

*Law in Force in Portugal to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The Portuguese law appears to provide for the seizure of goods bearing false indications of origin, whether the goods are thus marked before or after importation—in either case on the petition of an interested party. The enforcement of the law, so far as false indications of origin are concerned, seems to be of very rare occurrence. Traders, if aggrieved, could prosecute. Foreign governments, through their representatives, could press for the enforcement of the law only while the case is within the jurisdiction of the Customs and before it reaches the courts. The cost of an action brought by a trader might be between £30 and £100. No official steps are taken to prevent the importation of goods bearing a false indication of origin, but it would be the duty of a Customs Officer who noticed the case to report and await orders before passing the goods. There is no obligation to mark imported goods to show the country or place of origin, or to denote that they are foreign.

Marking Goods: "Marca Registrada."

*Decisions.*

The Denver Chemical Mfg. Co., of Denver, Colorado, had applied for the registration in Portugal of the trade mark "Antiphlogistine" for a medicinal preparation for the treatment of inflammation. The mark was refused upon the ground that it was descriptive. An appeal having been taken to the court from the decision of the Registrar, it was held that in view of the common use in medicine of the term "Antiphlogistic," the mark could not be considered an arbitrary or fanciful one, and that registration was properly denied.

Another application for the registration of the trade mark "No. 3" as a mark for wine was also refused upon the ground that the mark was not such as would serve to differentiate the products to which it was applied from others of the same kind, or distinguish the origin thereof, and that it was not, therefore, properly a trade mark within the meaning of the Portuguese law.

An application being made for the registration of the word "Lagrama" (tear) as a trade mark for wine, opposition was made by another party upon the ground that the word was not an arbitrary or fanciful term, but a generic term of a certain kind of grape very much used and very well known. Opposition was also filed by a third party, who claimed conflict with his previous registration "Lagrama de Moca." The decision refusing to register the mark was sustained upon the ground that

the word without the aid of any additional restrictive term, was not distinctive and, therefore, not registrable for the reasons alleged. (Boletim da la Prop. Ind., 1910, pp. 215, 216.)

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## PORTUGUESE COLONIES

### PORTUGUESE SOUTHWEST AFRICA

#### ANGOLA

Angola is a large province in southwest Africa, the coast line of Angola having an extent of 989 miles ( $4^{\circ} 40'$  to  $17^{\circ} 20'$  S.) It has an area of about 500,000 square miles and a population estimated at 19,403,000 (which is probably largely excessive); the population of the five districts, Loanda, Benguella, Congo, Lunda and Mossamedes, was, in 1911, about 790,000 (10,800 whites). It is divided for the purposes of government into six districts: Loanda, Benguella, Lunda, Hulla, Mossamedes and Congo; the last named being the part which lies within the conventional basin of the Congo, and of which the chief town is Cabinda, situated in a patch of Portugese territory a little to the north of the great river.

Ports: Taken in order from this extremity of the province, the ports of Angola are Landana, Cabinda, St. Antonio do Zaire (St. Antonio on the Congo), Quinzao, Mucula, Ambrizette, Mussera, Kinsembo, Ambriz, Loanda (the capital), Novo Redondo, Benguella, Mossamedes and Porto Alexandre.

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### PORTUGUESE NORTHWEST AFRICA

#### GUINEA

Portuguese Guinea comprises the possessions of Portugal in Senegambia. Its area is about 13,000 square miles and the population about 825,000 inhabitants.

#### SAN THOME AND PRINCIPE

The Portuguese ultramarine province of San Thomé and Principe consists of two fertile islands near the coast of Guinea. The area is 360 square miles and the population is about 46,200. These islands produce coffee, cacao and quina (which are the chief articles of export), palm kernels, copra and chinchona. San Thomé is the capital of these islands.

#### CAPE VERDE ISLANDS

Cape Verde Islands, on the west coast of Africa, has a population estimated at about 150,000 inhabitants; it is an archi-

pelago of a number of small islands, which are divided in two groups; that of Barlavento comprising the islands of S. Antao, St. Vincent, Santa Luzia, St. Nicolas, Boa Vista and Sal; and that of Sotavento comprising St. Thiago, Fogo, Brava and Maio. The area of the whole is about 1,480 square miles. The most important and productive islands are those of St. Thiago, S. Antao, Fogo, Brava and St. Nicolas.

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### PORTUGUESE EAST AFRICA

Portuguese East Africa consists of territories administered by the State, five in number, Lourenco Marques, Tete, Mozambique, Inhambane and Quilimane, and also territories administered by the Nyassa and Mozambique Companies under royal charters. Lourenco Marques is the capital of the province. The chief products are rubber, sugar, cocoanuts and beeswax. Gold has also been discovered and there are coal deposits in the Tete district. The Delagoa Bay railway connects the port of Lourenco Marques with Pretoria in the Transvaal, and has a length of about 350 miles. Beira is also connected by railway with Buluwayo in Rhodesia.

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### PORTUGUESE POSSESSIONS IN ASIA AND OCEANIA

#### INDIA

Portuguese India has an area of 3,502 kilometers and a population of about 480,000 inhabitants. It comprises five important islands: Goa, Chorão, Divar or Piedade, Combarjua or S. Braz and Ina or S. Estevão. The most important are Goa and Mormugão. The chief imports consist of cotton goods, grain, sugar, wines and spirits and metals. The chief exports consist of cocoanuts and other fruits, manganese ore, salt and betel nuts. The commerce is very unimportant. There is communication with both the ports by steamers, the former port only being visited during the period from about the middle of September to the end of the following May, and the latter port all the year round. The port of Mormugão is also connected with the British districts of the southern Maratha country by rail. Import cargoes are mostly landed at the port of Mormugão for transit by rail to the inland British Indian districts.

#### MACAO AND TIMOR

Macao is a part of the island of Hsiang Shan; its area is 45 square kilometers. The population is estimated at 65,000.

The trade of Macao is not very considerable and is, as far as the imports are concerned, mostly in the hands of the Chinese and Indians; the Portuguese do very little business themselves.

*Laws.*

By the terms of the Decree of December 17, 1903, and the Rules of April 21, 1904, it is now practicable to secure protection for trade marks in the Colonies of Portugal. These colonies may be enumerated as follows: Cape Verde, Guinea, St. Thomas and Prince's Island, Angola, Mozambique (East Coast of Africa), Portuguese India, Macau, Timor, Mozambique Company's Territory and Nyassa Company's Territory.

*What Can Be Registered.*

A mark must first be registered in Portugal and may then be registered in any one or more of the Colonies. A separate registration is required for each separate Colonial Division.

*Mode of Application.*

The application for the endorsement of protection for a mark in any of the Provinces, Districts or Territories mentioned must be made by means of a petition, written in Portuguese (Form E), and accompanied by the following documents:

(a) A Diploma of the Registration for the Kingdom and the adjacent islands, and as many certificates of such Registration as is the number of Provinces, Districts and Territories in which protection is applied for;

(b) A receipt (Form C) for the respective tax paid to the Bank of Portugal;

(c) As many blocks for the typographical reproduction of the marks as is the number of Provinces, Districts and Territories in which protection is sought;

(d) A Power of Attorney in favor of the person filing the petition, when such person is not the owner of the mark, or an Official Agent for Trade Marks acting in the name of said owner. (Art. 34.)

Clause 1. The petitions shall be signed by the owners of the marks, or by their legitimate representatives.

Clause 2. The signatures of the petitions and of the powers of attorney shall be duly attested by notaries having offices in Lisbon, or by the Portuguese Consular Agents abroad, and the signatures of the latter shall be attested by the Foreign Office.

Clause 3. When the applications are filed by Official Agents for trade marks, the documents which must accompany the petitions are those mentioned in Sub-Clauses (a), (b) and (c).

Clause 4. The blocks treated of in Sub-Clause (c) may be made of wood, zinc or any other substance suitable for printing with ordinary type. None of the superficial dimensions of the blocks shall be less than 15 millimeters nor more than 100 millimeters and the thickness must be 24 millimeters.

The first application for a Certificate of Registration must be accompanied by a block for the typographical reproduction of the mark. (Art. 35.)

The application for the registration of the transfer or assignment of a mark shall be made in a petition (Form F) setting forth:

(a) The christian name, surname, profession and domicile of the transferor or assignor;

(b) The number and the class of the mark;

(c) Nature and date of the document which proves the transfer. (Art. 36.)

Clause 1. This petition shall be accompanied by the Certificate of the Registration of the mark in the Kingdom and the adjacent islands, by the document proving the transfer, by the power of attorney in favor of the person filing the application, when such person is not the owner of the mark, and by the receipt for the corresponding tax deposited at the Bank of Portugal.

In the same petition the endorsement of protection may not be asked for more than one mark, for more than one of the Provinces, Districts or Territories mentioned, for more than one transfer, or for more than one class of goods. (Art. 37.)

Applications for an endorsement of protection in the Portuguese Colonies shall be made for the period of time still wanting to complete that for which registration was granted for the Kingdom and the adjacent islands. (Art. 38.)

Applications for the renewal of the protection of marks in the Portuguese Colonies shall be accompanied by the receipt for the corresponding tax deposited at the Bank of Portugal. (Art. 39.)

#### *Grants.*

Clause 1. Notice of all such allowals shall be published in the Boletim da Propriedade Industrial and in the Boletim Official of the Province, District or Territory for which protection has been granted.

#### *Assignments.*

When, in a contract for the conveyance of an Industrial or Commercial Establishment, there is no stipulation to the con-



trary, it shall be understood that the mark or marks accompany the establishment the goods produced by which are marked therewith. (Art. 44.)

#### *Lapsing and Cancellation.*

Protection of marks lapses in the Portuguese Colonies:

1. When it has lapsed in the Kingdom and the adjacent islands.

2. When the application for the renewal has not been filed, together with the application for the renewal of the registration, in the Kingdom and the adjacent islands. (Art. 45.)

Protection granted to marks in the Portuguese Colonies will become null and void when the registrations in the Kingdom and the adjacent islands are cancelled. (Art. 46.)

#### *Fees.*

The taxes relating to the protection of marks in the Portuguese Colonies are:

For the protection of one mark in each Province, District or Territory, 2,500 reis;

For the endorsement of a transfer, for each Province, District or Territory, 2,500 reis;

For the endorsement of a renewal of registration, for each Province, District or Territory, 2,500 reis;

Each Certificate of Registration, 1 milreis.

The order for depositing these taxes at the cashier's office at the Bank of Portugal shall be signed by the interested party, on a printed form supplied by the Department of Industrial Property. (Art. 47.)

## RHODESIA

British South Africa (Rhodesia) may be said to include all the region to the north and west of the Transvaal to the 22nd degree of south latitude, and the region to the east and west bounded by the Portuguese and German territories, and embraces the important territories known as Matabeleland and Mashonaland, and has an area of about 750,000 square miles. The country is very rich in minerals, especially gold. The principal towns are Bulawayo, Gwelo, Salisbury, Umtali and Victoria. By the new railway from Cape Town to the north, which is completed to about 380 miles north of Victoria Falls, access is given to the Natal system of railways via the Transvaal.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Law.*

Law No. 60 of April 28, 1897.

*Duration.*

Fourteen years; renewable.

At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registrations of a trade mark, the Registrar of Deeds shall send notice to the registered proprietor that the trade mark will be removed from the register unless the prescribed fee for the continuance of the mark be paid before the expiration of such fourteen years.

*What May Be Registered.*

A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

A distinctive mark, device, brand, heading, label or ticket; or

An invented word or invented words; or

A word or words having no reference to the character or quality of the goods, and not being a geographical name.

There may be added to any one or more of these particulars any letters, words or figures, or combination of letters, words or figures, or any of them; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark and must disclaim in his application any right to the exclusive use of the added matter. Provided as follows:

1. A person need not under this section disclaim his own name or the foreign equivalent thereof or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

2. Any special and distinctive word or words, letter, figure or combination of letters or figures, or of letters and figures, used as a trade mark before the eighth day of August, 1877, may be registered as a trade mark under the said Act.

*Mode of Application.*

Every application for the registration of a trade mark shall be in the following form:

To the Registrar of Deeds, Salisbury:

I (here insert full name and description of applicant) hereby apply for the registration of the following trade mark of which



sented above, this day lodged and deposited by me in the office of the said Registrar of Deeds in \_\_\_\_\_ for inspection; and I desire that the said trade mark shall be registered in respect of the following description of goods, that is to say (here insert class and description of goods.)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18

(Signature of applicant or his agent.)

At least thirty days must lapse between the date of the last advertisement of the application and the date on which application is made for the registration of the trade mark.

Subject to any other directions that may be given by the Registrar, all applications, notices, representations of marks, papers having representations affixed or other documents filed with the Registrar in connection with the registration of trade marks must be written on durable paper, having on the left hand side a margin of not less than two inches.

Subject to any other directions that may be given by the Registrar, every application for registration must be accompanied by three plain and distinct representations of the trade mark. If the mark is to be registered in more than one class then two additional representations for each class after the first shall be supplied.

Whenever a mark consists of or includes words printed in other than Roman characters, there shall be given at the foot of each representation a translation of such words signed by the applicant or his agent.

At the time of application for the registration of a mark the applicant shall lodge with the Registrar of Deeds copies of the newspaper in which his application appeared, and shall acquaint him with the dates of the Gazette in which it was published, and shall also lodge a form of certificate of registration having printed thereon a representation of the mark which it is his desire to register. Forms of such certificates shall be supplied by the Registrar of Deeds free of charge.

Any person objecting to the registration of a trade mark must give notice in duplicate (signed by himself, or his solicitor) to the Registrar of Deeds before the expiration of thirty days after the last advertisement of the application. Such person shall state the grounds of his objection, and shall before the expiration of thirty days or such further time as the Registrar of Deeds may allow after the date of lodging his objection, proceed to have the application set aside by some competent court, failing which the opposition shall be deemed to be abandoned.

Where registration of a trade mark has not been or shall not be completed within three months from the date upon which the application is received by the Registrar of Deeds by reason of default on the part of the applicant, the application shall be

deemed to be abandoned; provided that with regard to applications already lodged the three months shall be reckoned from the date of publication of this rule.

*Assignment.*

The right to the use of a trade mark is assignable by an instrument in writing, and such assignment of a trade mark shall be recorded in the Deeds Office within three months of the date of its execution, after the expiration of which period it will not be received unless upon the order of some competent court or judge. The assignment shall be signed by the registered proprietor or by his lawful representative, whose signatures shall be authenticated in the manner provided by No. 5 of these rules, with regard to the attestations of declarations, and shall contain full particulars of registration and assignment, as also the name, address and calling of the person, firm or company to whom the mark is assigned. The certificate of registration shall be produced for endorsement of such assignment. If it has been lost or destroyed a declaration setting forth fully the circumstances of such loss or destruction made by the registered proprietor and attested in the manner prescribed by No. 5 of these rules shall be lodged with the Registrar of Deeds.

*Classification.*

Same as in Cape Colony.

Marking Goods: "Registered Trade Mark."

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## ROUMANIA

The kingdom of Roumania comprises about 50,000 square miles and the population in 1911 was estimated to be 6,590,000.

The soil of the country is remarkably rich and minerals and precious metals are said to be abundant, but are not worked. Petroleum and coal are raised to an increasing extent.

The industry of Roumania being chiefly agricultural, the exports are principally wheat, rye, barley, oats, maize, bran, alcohol, timber, petroleum, etc., while the imports consist chiefly of southern fruits and colonial produce; chemicals and chemical products; leather, furs and manufactures thereof; textiles, etc.; machinery, sheet iron, etc.

**MONEY**—The L $\acute{e}$ u of 100 centimes or bani=9½d.=19 cents United States.

**WEIGHTS AND MEASURES**—The metric system.

*Law.*

Laws, May 28, 1879. Promulgated May 30, 1879.

*Duration.*

The duration of a trade mark is fifteen years. A prolongation may, however, be obtained for another term of fifteen years if the application for renewal is filed previous to the expiration of the first term. (Art. 8.)

*What May Be Registered.*

Proper subjects for consideration as trade marks are the different signs which serve to distinguish the products of a manufacturer, such as names under a special form, titles, stamps, impressions, seals, reliefs, figures, etc. (Art. 1.)

Those which are not suitable are: letters or monograms, and the arms of a country or state which the inhabitants place upon their products. (Art. 2.)

*Who May Apply.*

Foreigners owning in Roumania manufacturing or commercial establishments are entitled to the benefits accorded by this law upon compliance with the prescribed formalities. (Art. 10.)

Those Roumanians also who are non-residents, whose manufacturing or commercial establishments are situated outside of Roumania receive the benefits accorded by this law for their products if by treaty with the countries where such establishments are located, reciprocity is afforded for Roumanian trade marks. In this case the trade marks of foreigners should be deposited with the Registrar of the Tribunal of Commerce for the district of Illfov. (Art. 11.)

*Mode of Application.*

Applications for trade marks made by manufacturers, merchants, or agriculturists to the Registrar of the Tribunal of Commerce in their District, or in default of there being a Tribunal of Commerce to the Civil Tribunal, in order to receive the benefit resulting from the law of April 15, 1879, are subject to the following regulations. (Art. 1.)

The application must be made by the interested parties themselves or by their duly authorized agent.

The complete power may be made under private signature, but must be duly registered and should be deposited with the Registrar.

The model to be deposited consists of two copies of the mark on paper, being a drawing, engraving or an imprint representing the mark adopted. The paper to form a square eighteen centimeters on each side, the mark to be placed in the center of the same. (Art. 2.)

If the trade mark is graved or stamped in relief upon the articles, and these articles do not exceed the size of the paper, the applicant may deposit two samples thereof with either one or more figures of detail or an explanatory statement of the trade mark.

These modifications must be made on the left hand side of the paper on which the trade mark is represented, the right side of the paper being reserved for the particulars prescribed by Article 5, in conformity to the model given by the present decree. (Art. 3.)

One of these samples of the trade mark is attached to one of the leaves of a register kept for that purpose, and in the order of their presentation; the other is to be returned to the merchant, manufacturer, or agriculturist, with the legalization of the Tribunal.

The register is to be of paper twenty-four centimeters wide by forty centimeters high and is to be duly signed by the President of the Tribunal of Commerce or of the Civil Tribunal, as the case may be. (Art. 4.)

The Registrar draws up the process for each application, either in the order of its presentation in a register duly signed, or as had been stated in the preceding article.

This process should mention:

1. The day and hour of filing the application.
2. The name of the proprietor of the mark and that of his attorney.
3. The occupation and residence of the proprietor and the particular object to which he proposes to apply the mark.

Each process should be numbered in its order and this number is also inscribed on the two models with the name, residence and profession of the proprietor, the place and time of deposit, and the especial application for which it is intended.

When after the expiration of fifteen years, the proprietor of a mark renews his application, this circumstance must be mentioned on the models and also in the process.

The process before referred to is signed by the Registrar and the applicant or his attorney.

A copy of the process is given to the applicant. (Art. 5.)

#### *Requirements.*

Power of attorney, legalized by Roumanian Consul; two facsimiles of the mark; statement of the goods to which the mark belongs; one electrotype.

*Assignment.*

The property of a merchant or manufacturer in a trade mark ceases at the same time as the sale or manufacture of the article for which it was adopted. Trade marks are at all times assignable. In case of the assignment of a trade mark the assignee must, within three months apply for a copy under his name, otherwise the property in the trade mark ceases, the copy not having been made. (Art. 5.)

*Infringement and Penalties.*

A fine of from 50 to 2,500 francs and imprisonment from three months to three years, or either of these penalties may be imposed as follows:

1. On those who counterfeit a trade mark or who use a counterfeit trade mark.
2. On those who fraudulently apply to their articles of manufacture or commerce a trade mark belonging to others.
3. On those who have knowingly sold or have taken for sale one or more products bearing a fraudulent mark. (Art. 12.)

A fine of from 50 to 1,500 francs and imprisonment from one month to one year, or either of these two penalties may be imposed as follows:

1. On those who while not having counterfeited a trade mark, have imitated in a fraudulent manner the make of the article so as to deceive the purchaser or who have employed a fraudulent imitation of the trade mark.
2. On those who employ a trade mark calculated to deceive the purchaser as to the nature of the product.
3. Those who have knowingly sold or taken for sale, one or more products bearing the fraudulent imitation of a trade mark, being calculated to deceive the purchaser as to the nature of the product. (Art. 13.)

A fine of from 50 to 1,000 francs and imprisonment of from fifteen days to six months or either one of these penalties may be imposed as follows:

1. On those who have failed to place upon their products a trade mark which has been declared obligatory.
2. On those who have sold or offered for sale one or more products not bearing a mark which has been declared obligatory for that class of articles.
3. On those who have failed to observe the provisions of the decision rendered in support of article 3 of the present law. (Art. 14.)

The penalties instituted by the present law may not be increased, but the highest penalty should be imposed for all the



violations anterior to the first prosecution thereunder. (Art. 15.)

The penalties prescribed by articles 12, 13, and 14 may be doubled in case of a second offense. There shall be a second offense within the meaning of the law when within the five years preceding, a conviction of one of the offenses provided for in this law shall have been pronounced against an offender. (Art. 16.)

Article 60 of the Penal Code is applicable to offenses under the present law. (Art. 17.)

Persons convicted may be deprived for a period not exceeding ten years of the privileges of taking part in the elections for the Chamber of Commerce and other public institutions of an industrial or commercial nature.

At the same time the Tribunal may order the posting of the judgment in such places as it may designate and also its insertion in whole or in part in such journals as may be determined upon, such publication to be at the cost of the offender. (Art. 18.)

The Tribunal may order the confiscation or the destruction, not only of the articles upon which a trade mark contrary to the provisions of Articles 12 and 13 is recognized, but also of the instruments and utensils employed in their manufacture, and this also in case of the acquittal of the accused.

The Tribunal may order that the confiscated articles may be applied to the benefit of the proprietor of the trade mark which has been counterfeited or fraudulently used in addition to his damages therefor, if he so elects.

In all cases the Tribunal will direct the destruction of all trade marks which are found to be in violation of the provisions of Articles 12 and 13. (Art. 19.)

In cases under paragraphs 1 and 2 of Article 14, the Tribunal will always direct that the trade mark declared obligatory shall be placed upon those articles which are subject to this obligation.

The Tribunal may decree confiscation of the articles if the accused within the five years preceding has been convicted of an offense in contravention of the two first paragraphs of Article 14. (Art. 20.)

The judgments for these infractions are to be peremptory. (Art. 21.)

#### *Unfair Competition.*

The Trade Mark Law contains special provisions prohibiting the use of false trade descriptions which cannot be considered as constituting competition. According to these provisions it is prohibited to affix to foreign goods Roumanian trade marks or designations which might indicate Roumanian origin. Such

goods will be seized by the Custom House authorities. This provision of the law includes wine, brandy, and other beverages, cattle, flour, fruit and agricultural products. According to paragraph 336 of the Penal Code, all persons who make misleading statements, with fraudulent intent, respecting the quality of articles of merchandise, shall be punished by a fine and by imprisonment for a term of 1 to 6 months.

#### *Jurisdiction.*

Civil actions relating to trade marks are submitted to the Tribunal of Commerce and are adjudged as matters of urgency. In case of a criminal action, if the party arraigned should raise a question as to the legality of the trade mark, the Tribunal will pass upon the exception. (Art. 22.)

If the proprietor of a trade mark can prove that there are on sale certain products to his prejudice and contrary to the provisions of the present law he may proceed by the public criers to publish a detailed description of such articles by virtue of an ordinance of the president of the Tribunal of Commerce, or of the justice of the peace of that jurisdiction in case of the failure of the tribunal in the locality where the articles are found to take action in the matter.

The ordinance requires in suit a simple petition and afterwards a statement showing that the trade mark was duly registered. If necessary, an expert may be nominated who will aid the crier in making his description. If the complainant demands that the articles shall be recovered the judge will require him to give security before proceeding to effect their recovery. A copy of the ordinance of the Tribunal and a certificate showing that the security has been deposited shall be left with the proprietors of the articles sought to be recovered, under penalty of a recovery by damages against the persons seeking such recovery. (Art. 23.)

In case the complainant shall not bring an action either civil or criminal within twenty days, his right of recovery becomes void, without prejudice, however, to his right to obtain an award of damages in an action before the criminal courts.

#### *Law in Force in Roumania to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The Trade Mark Law of 1879 prohibits the importation of all goods bearing false indications of origin and renders them liable to seizure either by the custom authorities or at the request of the public prosecutor, or of the injured party. By the Anglo-Roumanian Convention of 1893, goods bearing false indications of origin are dealt with in the same way. The false application to goods of another's registered trade mark and the sale or exposition for sale of goods bearing falsely-applied,

counterfeit, or imitated registered trade marks are prohibited by law. Subjects of countries like Great Britain, which have concluded reciprocity trade mark conventions with Roumania, obtain this trade mark protection. A civil or criminal action may be brought for infringement of trade marks after seizure of goods. The probable cost of the action would be from \$130 to \$240. No special steps, except those already mentioned, are taken to prevent importation of goods bearing a false indication of origin. There is no law as to the compulsory marking of imported goods with the name of the country of origin, but, under the convention with Great Britain, if a vender in Roumania puts his name or address upon goods of British origin coming into Roumania, they must also bear an indication of the country or place of manufacture or production.

Marking Goods: "Marque déposée" or "Trade Mark Registered" in Roumanian Language.

#### DECISIONS.

##### *Trade Mark Infringements.*

A decision by the Commercial Court of Turnu-Severin, under date of December 27, 1907, indicates a quite advanced condition of trade mark protection in Roumania. The plaintiff, a French firm, had registered under the laws of Roumania, the word "Rigollot" as a trade mark for a brand of medicated paper, which went under the name "Papier Rigollot." The defendants, a Roumanian concern, sold at their pharmacy a similar paper, the label of which bore the words "Papier dit Rigollot," that is to say, "paper called Rigollot." The defendant claimed that the mark was indicative of the character of the product, and that it had been thus used by him. The court found, however, that this was not the fact, but that it was merely a fanciful term chosen by the plaintiff to distinguish its products from similar products of other manufacture. As to the defendant's claim that he could not be punished because the infringing articles had been manufactured before the registration of the French mark, the court said that the registration in Roumania was, in any event, only declarative and was not attributive of property, and the fact that the infringement dated from before the registration, did not, therefore, deprive the owners of the mark of their remedy against the infringer; moreover, the defendant having continued to sell his preparation since the registration of the French mark, there could be no question of his liability for such continued infringement.

The defendant relied upon the further ground that his label was in appearance entirely different from that of the plaintiff, but the court said that inasmuch as he had made use of the name "Rigollot" he had done so with a view to causing it to

be understood that his product was the article known under that name, and therefore, there was no doubt of his liability; that the defendant had no right to use the word, in any manner, so as to cause confusion between his preparation and that of the plaintiffs.

Damages were, therefore, awarded to the plaintiffs, who were declared entitled to the exclusive use of the mark, and the judgment was directed to be published in two newspapers at the expense of the defendant. (*Darasse & Co. vs. Boemsches, Revue Int. de La Prop. Ind.*, 1908, p. 16.)

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## RUSSIA

The total area of the Russian Empire is 8,647,657 square miles and the population in 1911 was estimated to be 149,300,300.

The industry of Russia is chiefly agricultural, and upon the success or failure of the crops the prosperity or otherwise of the country mainly depends. Various parts of the Empire are, however, rich in mineral wealth, such as Siberia, the Ural mountains, the Caucasus, etc. But, although the precious metals, as well as iron, copper, lead, zinc and coal, exist in considerable quantities, the mining industry is very slow of development, in spite of the very heavy import duties upon all descriptions of material imported. Iron and coal are found in the southeast, towards the Sea of Azoff, and in Poland, both in sufficient quantities and in sufficiently accessible localities to promise a steady industrial development. In the Ural mountains iron of excellent quality and various other minerals are found, but the desirable corresponding supply of coal in the neighborhood is wanting, whilst the forests are very much exhausted, and the Urals are too far from the consuming markets of the world to permit the expectation of a rapid development of mineral industry in that region. Gold is found exclusively in the Urals and Siberia and petroleum practically exclusively in the Caucasus.

**MONEY**—The rouble (gold)=100 copeks=2s. 1-1/2d.=51 cents U. S.

**WEIGHTS**—Poud=40 funts=36.11 lbs. avoirdupois=16.380 grammes; Funt=32 lot=96 solotniks=0.9028 lbs. avoirdupois=409.5 grammes.

**MEASURES**—Sajene=3 arshins=7 ft.=2.13356 meters; Arshin=16 vershoks=28 inches=0.7119 meters; Russian inch=English inch=0.0254 meters; vedro=10 krouch kas=2.707 Imp. gallons=12.289 litres.

*Laws.*

Laws of February 26, 1896.

*What May be Registered.*

As trade marks are considered, as per Section 1, Article 1, of the Trade Marks Laws: stamps, brands, seals, leads (like those at the Custom House, for instance), capsules, marking (either woven or embroidered), all kinds of labels, vignettes, mottoes and devices, packing (wrappers, etc), drawings of special packing, etc.

Trade Marks for articles, etc., manufactured abroad can be registered only in such a case in Russia (Finland excepted), when the same trade marks are registered in the country where the identical articles are manufactured and the works are situated in one of the following countries or states with which mutual treaties or conventions have been concluded by the Empire of Russia to that effect. Those countries or states are: Austria and Hungary, Belgium, Denmark, France, Germany, Great Britain, Italy, the Netherlands, the United States of North America, Servia, Spain, Switzerland and Japan.

Word marks are protected, however, only under the restriction that the pictorial appearance of the word, and consequently the kind of type, but not the sound and the composition of the word are protected. Word marks in Russia consequently possess only a secondary value. In the case of marks for medical preparations the permission to introduce the preparations must be obtained.

*Term.*

The protection of a trade mark can be applied for, according to the petitioner's desire, from one year to ten. A Russian certificate for a foreign trade mark cannot, however, be obtained for a longer term than the term that is mentioned in the respective certificate of registration of the country where the articles, etc., are manufactured. The protection may be renewed at the expiration of the term if the protection of the mark at home and the respective mutual treaty or convention above referred to are still in full force.

*Application Formalities.*

The petition is for a period of registration of from one to ten years, subject to the payment of the corresponding fees. Certificates of Filing are not given. The application is not published. The documents are examined both with regard to formal requirements and also concerning the subject-matter, and the

application is rejected if it is shown that the mark is identical with, or is capable of being mistaken for an older mark which has already been registered. An alteration of the mark can then possibly be made. In case the mark is novel the registration is effected, the Certificate of Registration is prepared, and the mark is published in the Official Journals. A registered mark can be contested by Civil Proceedings within three years of the publication and the registration can be cancelled on producing reasons against the subject-matter.

#### *Publication.*

The publication of the delivery and the forfeiture of certificates of registration of trade marks which have appeared in the Messenger before the publication of this decree, and which have been made upon the order of the Department of Commerce and Manufacture, and later on by the order of the Industrial Section, shall be considered as having full effect, even if they did not contain a description of the trade mark. (Decree of February, 1911.)

#### *Renewal of Trade Marks.*

For the purpose of renewing a Trade Mark the same papers as are necessary for the first registration of a mark are required.

#### *The Assignment of Trade Marks.*

The assignment of Trade Marks can be effected only if the business of the former proprietor of the mark or a part of this business to which the registered mark belongs passes over simultaneously to other persons. The transfer of the mark must be communicated to the Russian Authorities within six months of the assignment of the business. If this notification is not made or is not made in due time, the protection expires.

#### *Documents Required.*

1. A power in the Russian language legalized by a Russian Consul.
2. Fifty facsimiles of mark.
3. A Certificate of Registration in the native country, legalized by a Russian Consul.
4. A translation of the same. This must be translated either by a sworn Russian translator or must be certified by a Russian Consul as correct.

*Laws in Force in Russia to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

Foreign goods bearing a false indication of Russian origin, consisting of a Russian trade mark (Kleimo), or the address of a Russian manufacturer, are seized by the customs on importation. The trade mark law of 1896 apparently (though the interpretation has never been decided by the courts) prohibits the application to goods of trade marks containing false indications of any origin, as well as the sale of such goods. Cases of false indications of non-Russian origin are not taken up officially, but if the interested manufacturer or the representative of the foreign power concerned notified the authorities of any contravention of the trade mark law, they would have to institute proceedings. The cost of prosecution is nil except for lawyer's fees. No steps are taken to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the compulsory marking of imported goods to show the country or place of origin or to denote that they are foreign.

Marking Goods:

**ЗНАКЪ ЗАЯВЛ. ОТД. ПРОМ. 38. № . . . . .**

*Protection of Proprietary Remedies.*

In the absence of any specific law in Russia against unfair competition, two recent orders emanating from the board of health of Russia have a peculiar interest. By the first of these orders, Russian apothecaries were given the right to make and sell imitations of foreign proprietary remedies, under the names by which they are known in the country of origin and on the sole condition that the name of the firm making the imitation and the place of manufacture be shown upon the label. So many protests against this order were received from neighboring countries that it was somewhat modified by a later decree, providing that hereafter preparations of Russian origin shall be distinguished from those of foreign make, both in color and form and in the imprint of the wrappings and labels. The wording of the labels on Russian preparations must be in the Russian language, and in conspicuous characters. The words "of Russian origin" must appear on the labels, and also a phrase showing that the preparation is made after the formula of the original manufacturer.

These later regulations indicate an attempt on the part of the Russian authorities to provide against unfair competition, a matter about which the law of that Empire has before been silent. Hitherto, the Russian courts have made registration the basis of suits for unfair competition, giving no protection to owners

of proprietary medicines, who might wish to market their products in Russia, except that secured by registration.

The present requirements of the board of the health make it possible to protect the outer wrappings of medicinal preparations from confusion with similar products of Russian origin. The decree is therefore regarded as an important step in the protection of foreign trade marks and labels. (*Gewerblicher Rechtsschutz und Urheberrecht*, 1912, p. 111.)

#### *Punishment for Counterfeiting a Trade Mark.*

Five directors of a rubber concern in Riga were adjudged guilty of counterfeiting the trade mark of a German firm, consisting of the representation of an elephant, and sentenced to imprisonment for a term of two months. Under the Russian law, a dealer or producer who makes unauthorized use of another's mark whether upon his goods, on his labels or wrappers, or in price lists or advertising, or who uses in his business a mark closely resembling that in use by another, is liable to a maximum penalty of eight months' imprisonment.

#### *Trade Mark Protection.*

Information as to the operations of the trade mark law in Russia is very difficult and almost impossible to obtain. The field is one which appears to have been little inquired into.

It appears that there is produced in France a tonic wine under the name "Wine of Saint Raphael" which has an extensive sale both there and abroad. In the year 1896 a Russian firm arranged with one Gras domiciled at Saint Raphael in France to register in that country a trade mark, the essential feature of which was the words "Wine of Saint Raphael" followed by the name of the department (Var) in which the town of Saint Raphael was located. A company was then formed for the exploitation of the trade mark so registered under the name of the "Society for the Production of Wine of Saint Raphael (Var)," and under this name and mark the company began extensively to put out the product.

The company, however, never had any vineyards at Saint Raphael nor any business there, and indeed the wines of that region were not of a character in any way suited to their purpose, because not in any way similar to the genuine wine of Saint Raphael, and therefore not capable of competing with it. The company did procure a wine somewhat similar from other sources and sold it extensively in Russia.

In France the injured company was able to procure redress, obtaining the cancellation of the trade mark registered by Gras, and a judgment for ten thousand francs against the company. This relief was obtained in a judgment of the court of first instance at Marseilles under date of September, 1899, and was



carried by appeal to the Court of Cassation, where it was affirmed in April, 1905.

It was found impossible, however, to execute this judgment in France, for the reason that the parties had never had any bona fide place of business in Saint Raphael, and that the company defendant had entirely disappeared when the decision became final. Therefore, the successful party addressed itself to the Russian courts for the purpose of their obtaining the relief which it was unable to obtain at home. Messrs. Kempner Bros. were still continuing in Russia to sell the offending product, in spite of the adverse decision of the French courts and in spite of the cancellation of their registration in that country.

Upon the suit of the French company in February, 1906, a judgment was rendered by the Commercial Court of Varsovie, ordering the cancellation in Russia of the trade mark there registered by Gras and requiring the withdrawal from the market of all products bearing the offending mark. This judgment was, however, reversed in the following year upon the technical ground that the Russian mark was based upon a French registration other than that which had been cancelled in France and that this registration, although of a mark similar to that cancelled in France, was still in force.

An appeal was then taken by the French company to the Russian Senate, but its appeal was rejected in the year 1908, upon the ground that the only question to be decided was whether the French registration upon which the Russian registration was based, was still in force and, this appearing to be the case, no attack could be made upon the Russian registration. Thus, the injured company would have been put to the necessity of beginning over again in France after nine years, and seeking to obtain the cancellation of the remaining French registration, the existence of which had caused it difficulty.

The matter was, however, brought to the attention of the French Ambassador at St. Petersburg, it being pointed out to him that the wine sold under the name Saint Raphael by Kempner Bros., was falsely marked as to its origin, for the reason that not only was it not produced at Saint Raphael, but that the wines there produced were of an entirely different character from the wine marketed under that name. The matter thus came before the Medical Department of the Russian government, which instituted an investigation and found that the wine of Saint Raphael, sold by Kempner Bros., originated in their own establishment at Varsovie, that when it was ready for the market they succeeded by fraudulent means, in having it introduced into the custom houses and there marked with the usual marks indicating foreign origin. Thus marked, it was issued from the custom houses and sold to the public.

These fraudulent practices having been disclosed, Messrs.

Kempner Bros. found themselves in the hands of the Russian police and were obliged to sign a declaration engaging themselves no longer to sell their wine under the name Saint Raphael nor to claim medicinal qualities for it and to cease from advertising that the bottles containing their wine bore the stamp of the French government, no authority for use of this stamp having been obtained.

Thus the French company, which through a narrow interpretation of the Russian law of trade marks had not succeeded in suppressing the infringement of its trade mark in the courts, was able, nevertheless to compel the offending party to desist from the wrongful acts done to its prejudice by invoking the provisions of the domestic law of the country, which forbade deception as to the nature, quality or origin of merchandise placed upon the market. (*La Propriete Ind.*, 1909, p. 116.)

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## SALVADOR

The area of this Republic is 7,230 English square miles, and the population in 1909 was estimated to be 1,118,300. It only possesses a coast line on the Pacific.

The principal imports are cotton goods, drugs, hardware, flour and yarn.

**MONEY**—The peso (100 centavos)=4s. (nominal value)=96 cents U. S.

**WEIGHTS AND MEASURES**—The metric system.

### *Law.*

Law, May 11, 1910.

### *Term.*

The registration of a trade mark shall remain in force for twenty years and expire at the end of that period, unless a renewal has been obtained in due season. Each renewal shall be valid for twenty years.

### *Renewal.*

Any registration may be renewed before its expiration upon payment of the fee provided by this law. When a receipt to that effect is presented to the Patent Office it shall enter on the register the renewal of the mark and deliver to the registrant a certificate to that effect, or it shall note the renewal of the specimen referred to in Art. 15, without other formality.

*Who May Register.*

The owner of any trade mark, whether a citizen or a foreigner, may acquire the exclusive right to the use of the same in the Republic by complying with the provisions of this law. The party who was the first to use the trade mark shall be considered the owner of the same.

*What May be Registered.*

Any sign calculated to distinguish the products of a factory or of agriculture or the articles of a trading house shall be considered a trade mark.

A trade mark may be formed by anything not prohibited by this law and capable of being used to distinguish identical or similar articles, but of different origin.

*Marks Not Registrable.*

(1) Letters, words, names, coats of arms, emblems or insignia used by the native State or municipalities, or by foreign States or towns, either for themselves, or for their employees or their institutions.

(2) The shape and the color of the article.

(3) Generic terms or expressions used to designate an article or such as lack novelty with regard to the article to which they are appropriated, in any language whatsoever.

(4) Designations in common use, in Spanish or any other language, to indicate the character, class or quality of the article.

(5) Expressions and designs contrary to morals.

(6) The names of individuals or of a firm, or corporation unless presented in some particular and distinctive form.

(7) A trade mark previously registered or employed by a third party or resembling such trade mark, when it is intended for articles of the same character.

(8) The name or portrait of a person without the consent of the latter. In the case of a deceased person, his or her portrait may be used unless objected to by his or her heirs.

(9) A geographical name when it forms the essential element of the trade mark. Such a name may be used only to indicate the place of origin of the article. Names of places belonging to private estates may be registered, but only in favor of the owners or with their consent.

(10) The distinctive signs of the Red Cross; but persons or commercial companies which have hitherto used them after having had them duly registered shall not be molested nor compelled to make any changes therein, without prejudice to the regulations which the Red Cross Society may issue. (Art. 3.)

*Mode of Application.*

Any person wishing to acquire the ownership of a trade mark shall make application therefor to the Patent Office.

The application shall be accompanied by:

(1) A power of attorney if the application is filed by an attorney.

(2) Twenty specimens of the trade mark.

(3) A stereotype of the mark, which shall not be less than 15 nor more than 100 mm. in length and width, and 20 to 30 mm. in height. When a trade mark consists of several distinct parts, a stereotype shall be filed for each of them.

(4) A receipt from the competent treasury showing payment of the fees provided by law.

(5) The consent in writing of the party in interest in the cases referred to under 8 and 9 of Art. 3. Such consent shall not be necessary in the case of a foreign trade mark duly registered in the country of origin. Nor shall it be required in case of renewal of a trade mark previously registered in conformity with this law.

The application shall recite:

(1) The name and residence of the owner of the trade mark.

(2) A detailed statement or description of the trade mark setting forth the essential parts claimed by the applicant.

(3) The goods or articles for which the trade mark is intended.

(4) The nationality of the trade mark.

(5) The country and city or place where the article is manufactured.

(6) The name of the factory, if it has one. (Art. 13.)

When an application has been filed, the Patent Office shall note thereon the day and hour of filing, and shall number and "flourish" each of the sheets composing it.

The Patent Office shall cause the application of the party in interest to be published three times in the Official Journal; and if within 90 days following such publication no notice of opposition is filed, the Office shall declare the trade mark to be the property of the applicant; it shall determine the class of goods for which the trade mark is to be used, and shall order the registration of the trade mark; it shall return to the registrant one of the specimens of the latter, on which have been noted the number and pages of the register relating to such trade mark and a statement to the effect that the registration fee has been paid and certifying to the filing of the application. In case of opposition, registration shall be suspended, and the parties shall be required to establish their rights before the courts having jurisdiction in the matter, which shall decide in whose favor the trade mark is to be registered. The party opposing the registra-

tion shall file his application within 90 days, and transmit to the Patent Office a verified statement to that effect; if such statement is not filed within the time specified the Office shall proceed to the registration of the mark. (Art. 15.)

Any person who considers himself injured by the registration of a trade mark shall be at liberty to apply for its cancellation; but this right of action shall be limited to five years from the date of registration. The action shall be decided by ordinary court proceedings.

The right of priority for the ownership of a trade mark shall be decided according to the use which has been made of the mark; and if it has not been used, then according to the day and hour when the application was filed in the Patent Office.

Registration of a trade mark confers the right to its exclusive use for the articles to which it is appropriated and for all other articles of the same class and character.

#### *Documents Required.*

Power of attorney, legalized by Consul; certified copy of home registration, legalized by Consul; 20 copies of the mark. (Forms for application may be obtained from B. Singer's Offices.)

#### *Opposition.*

The right to oppose the use of any trade mark likely to cause confusion, directly or indirectly, between the products shall belong to the manufacturer, merchant or agriculturist who shall have complied with the formalities prescribed by this law.

#### *Assignment.*

The transfer or sale of an establishment implies that of the trade mark, except in case of a stipulation to the contrary, and the assignee shall have the right to use such trade mark, even if constituted by a name, in the same manner as the assignor, without other restrictions than those expressly imposed by the deed of assignment.

#### *Trade Names.*

The name of the merchant or producer, that of the firm, of the corporation, the commercial name of a house or establishment trading in certain articles of goods, that of a periodical, office or agency, shall constitute ownership for the purposes of this law.

Any person wishing to engage in an industry, commerce, or specialty already carried on by another person, under the same name or the same conventional designation, shall be compelled to adopt a modification which will plainly distinguish such

name or designation from that used by the house or establishment already in existence.

If a person injured by the use of a name does not give notice of opposition within one year from the day when a third party began using the same in a notorious manner, he shall lose all right of opposition in the matter. The action in such case shall be decided by ordinary court proceedings.

Corporations shall have the same right to the name they bear as any individuals and shall be subject to the same restrictions.

The right to the exclusive use of a name by reason of ownership shall terminate with the discontinuance of the trading firm bearing the same or of the sale of the special article to which it is appropriated.

Registration of the name shall not be necessary to exercise the rights granted by this law.

#### *Classification.*

For the purposes of this law of 1910, the merchandise to which trade marks shall be applied is identical with that adopted by Argentine Republic. Altogether there are eighty classes. (See Argentine.)

It shall be necessary to affix the trade mark to the articles to which it is appropriated. If it is not used within a term of one year from the date of registration, or if it ceases to be used for one year, it shall become null and void.

In the case of a foreign trade mark, importation of the article into Salvador is not required, and the mark shall not be forfeited provided the provisions of Article 9 are complied with outside of this Republic.

#### *Fees.*

All documents filed in the Patent Office for the registration of trade marks shall be written on stamped paper at 10 centavos a sheet.

Certificates of registration asked for by the parties in interest shall be written on stamped paper at 25 centavos a sheet.

Certificates of registration transmitted to the custom houses shall be written on stamped paper at 10 centavos a sheet.

The registration fee shall be 5 pesos for each trade mark.

When registrants file certificates of registration printed at their own expense, they may be accepted on unstamped paper, but a revenue stamp equivalent to the total value of the stamped paper required by this law shall be affixed thereto, and such stamp shall be canceled by the seal of the Patent Office.

The publication of a trade mark or of an application for registration shall cost the registrant or applicant not to exceed 5 pesos.

All laws which directly or indirectly charge the registration of

trade marks with expenses of stamps or stamped paper are abrogated.

*Law in Force in Salvador to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No laws are in force to prevent the importation or sale of goods bearing a false indication of foreign origin except as regards goods specially protected by registered trade marks. The sale of goods marked with a false trade mark is prohibited by law. Prosecutions are rare, but there would be no serious difficulty in procuring a conviction. Judicial fees as a rule are low, and lawyers' services are not highly paid. No steps are taken to determine the place of origin of imported goods. There are no requirements as to the marking of imported goods to show the country or place of origin.

Marking Goods: "Marca Registrada."

*Infringement.*

The following cases shall constitute infringement of a trade mark:

(1) When the original trade mark is reproduced on merchandise or products of the same character as those to which it is appropriated.

(2) When merchandise bearing such reproduced trade mark is sold or offered for sale.

(3) When such reproduced trade marks are sold, offered for sale or bought.

(4) When original trade marks are sold, offered for sale, or bought without the written consent of the owner.

(5) When trade marks are used which contain false statements as to the nature, amount, quality, origin and place of manufacture of the articles or goods, or when false claims are made as to titles, medals, diplomas, or other distinctions having been obtained therefor at expositions or otherwise.

(6) When a trade mark, without being reproduced is detached or separated from an article to be applied to another.

(7) When a person affixes his name, that of his establishment, or any other word or sign to an original trade mark.

(8) When receptacles bearing the trade mark of a third party are filled with adulterated products; when such receptacles are filled with products which do not correspond to the true statements appearing on the trade mark applied to the receptacle; when products of different origin or adulterated ones are mixed with the authentic products bearing original trade marks, and when a person keeps or sells such products, which shall be presumed to be the case when they are found in his shops, stores or cellars.

The Patent Office shall send to all the custom houses a copy of all the registrations of trade marks effected or which may be effected, together with a specimen of each trade mark.

In case of importation of merchandise to which fraudulent trade marks are affixed, the collector of customs shall turn such merchandise over to the proper courts.

An article is presumed to bear a fraudulent trade mark when it comes from a country other than that stated in the application in accordance with the terms of Art. 13.

Any machine or instrument designed to counterfeit trade marks shall be confiscated.

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## SERVIA

The area of this kingdom consists of about 19,000 square miles. The population in 1911 was estimated at 2,690,800. Servia previous to 1877 was subject to Turkey, but in that year declared its independence which was acknowledged in 1878 at the Congress of Berlin.

The imports consist of paper, wool and hair, timber and wooden articles, live stock and animal produce, provisions and liquors, pottery and glass, metals, hides, rubber and oilcloth, groceries and fruits, chemicals and colors, fatty produce (oils, etc.), machinery, instruments, etc., cotton, hemp, flax, etc. (chiefly yarns), textile goods, silk, fancy and cutlery goods, and ready-made clothing.

**MONEY**—The dinar=100 paras=9 1/2d. or one franc.=19 cents U. S.

**WEIGHTS AND MEASURES**—The metric system.

### *Law.*

Laws of May 30, 1884.

### *Duration.*

Trade mark registration extends for the term of 10 years. After the expiration of this term the registration may be renewed, provided that the prescriptions of the law are complied with.

### *Requirements.*

Power of attorney, legalized by Servian Consul; five copies of mark and a sample of material marked.



*Mode of Application.*

Any one who desires to secure the exclusive right to use a mark must deposit three copies thereof at the Departmental Tribunal of the locality of his place of business. If the applicant is established at Belgrade or is a foreigner the registration takes place at the Tribunal of Commerce of Belgrade. In either case the applicant must with his deposit give an exact list of the goods to which the mark is to be applied. If the marks are intended for articles of metal, glass, pottery, etc., specimens of these articles bearing the mark must also be deposited. Marks and specimens must be deposited of the same dimensions employed in commerce. Likewise the use of a mark shall not be allowed but on the scale in which it has been registered. (Art. 11.)

Of marks registered under Article 11, one copy is to remain on deposit at the Tribunal, one to be sent to the applicant, and the third to be deposited with the specimen at the Ministry of Agriculture and Commerce. (Art. 13.)

Every application for the registration of a mark requires a fee of twenty dinars (francs), in stamps, which must be affixed to the application. (Art. 14.)

*Annulment.*

The annulment of a trade mark may be declared by the Departmental Tribunal, and at Belgrade by the Tribunal of Commerce of that city. Annulment is declared in a judicial decision. It will be noted in the register of marks, and announced by a judicial insertion in the Official Journal. Annulment of a mark shall be declared: (a) In case of violation of the provisions of Article 2. (b) By virtue of a judicial decision rendered in a suit or contest regarding marks. (c) For failure to renew the registration. (Art. 15.)

In the last case a fine of twenty dinars is to be paid by the party found culpable. (Art. 19.)

*Offenses and Penalties.*

Any violation of the exclusive right to a mark whether by illicit use or by counterfeiting it, gives to the injured owner the right to demand the injunction of the fraudulent mark, and its removal from the merchandise. Moreover, the owner may demand the seizure and destruction not only of the mark, but also of the tools and instrument used in their fabrication. The courts shall fix in conformity with the provisions of the Civil Code the amount of damages to be paid to the injured party. The owner can demand that, in lieu of damages, the infringer be condemned to a fine of from 50 to 300 dinars, to his benefit. The court may agree to this motion and assign to the injured party the

said amount as indemnity. These provisions are applicable without prejudice to the penalties prescribed in Articles 23, 24 and 25 of this law. (Article 20.)

Counterfeiting is established when it is determined by experts to exist under the terms of this law. (Article 21.)

If fraudulent intent is established the offender shall be liable to a fine of from 50 to 500 dinars to the profit of the Treasury, and that without prejudice to the penalties prescribed by the Penal Code and by Article 2 of this law. (Article 24.)

For a second offense the fine is doubled. For a third offense the offender shall be further liable to imprisonment from fifteen to sixty days, and his establishment may be closed for a period of from three to six months. Duress may take place when one-third of the offender's property shall not suffice to pay the fine incurred. Duress shall be calculated at the rate of one day in prison to five dinars fine. (Article 25.)

If a trade mark is infringed, the party to whom any damage may be caused shall have the right to sue for damages and to have all those instruments confiscated and destroyed which may have been used by the infringer.

All goods to which infringed trade marks are applied may be confiscated when they are publicly exposed or imported.

Actions may be instituted before the Courts of First Instance or before the Tribunal of Commerce in Belgrade.

#### *Assignment.*

The right of ownership to a trade mark is transferable. All transfers relating to trade marks shall be recorded and the Government fee for each record of a transfer shall be 20 dinars, i. e., the same sum as that due for the registration of a trade mark.

#### *Adhesion to the Additional Act of Brussels of December 14, 1900.*

By a note dated August 10/23. 1909, the Minister of Foreign Affairs of Servia announced to the Swiss Federal Council the adhesion by his government to the Additional Act of Brussels of Dec. 14, 1900, modifying the International Convention of March 20, 1883, for the Protection of Industrial Property.

In accordance with Art. 16 of the Convention this adhesion will take effect one month after the notification given to the Union States, which notification was effected Sept. 10, 1909. (La Propriété Ind., Sept. 30, 1909.)

#### *Laws in Force in Servia to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

There are no laws or regulations in force to prevent the sale or importation of goods bearing a false indication of origin.

The law prohibits the false application to goods of trade marks registered in Servia, and, in cases of infringement of trade marks not registered in Servia, an action for damages may be brought, provided that injury can be proved.

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## SEYCHELLES

The Seychelles Islands are situated between the parallels of S. lat. 4° and 5°. In all there are 89 islands under the Seychelles government. The Seychelles Islands altogether are estimated to comprise 148 1/9 square miles with an estimated population of 21,850.

MONEY—1 rupee (100 cents)=1 s. 4 d.=32 cents U. S.

WEIGHTS AND MEASURES—The metric system.

### *Law.*

Merchandise Marks Ordinance, 1903, No. 23.

### *Duration.*

Fourteen years; renewable.

### *What May Be Registered.*

A name of an individual, or firm, printed, impressed, or woven in some particular or distinctive manner; or

A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

A distinctive device, mark, brand, heading, label, or ticket.

An invented word or invented words; or

A word or words having no reference to the character or quality of the goods, and not being a geographical name.

There may be added to any one or more of the essential particulars mentioned in this section any letter, words, or figures, or combination of letters, words, or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of added matter, and a copy of the statement and disclaimer shall be entered on the register.

A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of

the same name to use that name or the foreign equivalent thereof.

Any special and distinctive word or words, letter, figure, or combination of letters or figures or of letters and figures used as a trade mark before August 13, 1875, may be registered as a trade mark under this Act.

#### *Requirements.*

Authorization to agent signed by applicant or applicants; full name, address and occupation of the applicant; full description of goods to be covered; wood block or electrotype of the mark, preferably not more than two inches in breadth and width, otherwise additional space is required for advertising, which must be paid for; six copies of the mark.

#### *Classification.*

Same as in Great Britain.

For practice, etc., follow entirely the rules and regulations, as well as the penal code of the Mauritius ordinance.

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## SIAM

The kingdom of Siam consists of an estimated area of about 195,000 square miles. The population according to the latest estimates is about 6,000,000. Some 525 miles of government railways are in working order. The greatest importance is also attached by the government to irrigation works.

Rice is the principal item of export. Gold is being worked in small quantities throughout Siam, though the production is not estimated to be more than 1,000 ounces. There are also ruby mines behind Chantaboon, worked by the New Kabin Gold Mines of Siam, Limited.

MONEY—The tical=36¼ cents.

#### *Laws.*

The new penal code for the Kingdom of Siam, which became effective September 21, 1908, contains certain provisions for the protection of trade marks and trade names. Consul-General John Van A. MacMurray of Bangkok, forwards a copy of an English rendering of the relevant sections, quoted from the final English draft version of the code. He states that there is as yet no provision for the registration of trade marks or trade names. The new code follows:

Sec. 235. Whoever knowingly puts or causes to appear on any goods, packings, coverings, advertisements, price-lists, business letters, circulars, or the like the name of any other person or firm to the use of which he has no right shall be punished with imprisonment of one month to one year and a fine of fifty to two thousand ticals (tical=about  $36\frac{1}{4}$  cents).

Sec. 236. Whoever counterfeits any trade mark, or any name or firm name used as a trade mark, shall be punished with imprisonment of three months to three years and a fine of one hundred to five thousand ticals.

Sec. 237. Whoever without counterfeiting a trade mark fraudulently imitates it in a manner calculated to deceive a purchaser shall be punished with imprisonment of one month to one year and a fine of fifty to two thousand ticals.

Sec. 238. Whoever imports, sells, or exposes for sale any property which he knows to bear a false name or a false trade mark or an imitated trade mark, as described in Sections 235, 236 and 237, shall be liable to the punishment prescribed by such sections, as the case may be.

Sec. 239. Any false instrument of weighing or false weight or measure mentioned in Sections 233 and 234, and any property bearing a false name or a false trade mark or an imitated trade mark, as described in Sections 235, 236 and 237, shall be forfeited without regard to the conviction or non-conviction of any particular person. (From Daily Consular and Trade Reports.)

In the absence of any provision by the Siamese government for the registration of trade marks, it is customary to register such marks at the consulates of the respective countries. (Daily Consular Reports, Dec. 13, 1909.)

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## SOUTHERN NIGERIA

(Includes Lagos.)

The colony and protectorate of Southern Nigeria, comprising an area estimated at 77,000 square miles, has been formed by the amalgamation of the two administrations of Lagos and Southern Nigeria.

The territory for the purposes of administration has been divided into three Provinces: (1) The Western or Lagos Province, comprising the former Colony or Protectorate of Lagos with headquarters at Lagos, having an area of about 28,000 square miles; (2) the Central or Niger Province with headquarters at Warri; (3) the Eastern or Calabar Province with headquarters at Calabar. Each of these provinces is administered by a Provincial Commissioner under the direction of

the Governor. The headquarters of the whole administration has been established at Lagos. The total native population is estimated at 6,086,000 and the European population at 2,000. The principal imports are cotton goods and spirits.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Law.*

Ordinance No. 18 of 1910.

*Duration and Renewal.*

The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this ordinance. (Art. 32.)

The Registrar shall on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed the expiration of the last registration. (Art. 33.)

*Registrable Trade Marks.*

A registrable trade mark must contain or consist of at least one of the following essential particulars:

(1) The name of a company, individual or firm represented in a special or particular manner.

(2) The signature of the applicant for registration or some predecessor in his business.

(3) An invented word or invented words.

(4) A word or words having no direct reference to the character or quality of the goods and not being according to its ordinary signification a geographical name or surname.

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the description in the above paragraphs (1), (2), (3), (4), shall not, except by order of the court, be deemed a distinctive mark.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted the court may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Provided always that any mark which has been registered as a distinctive mark in England under the Trade Marks Act, 1905, shall be deemed to be a distinctive mark for the purpose of this ordinance. (Art. 8.)

Any person who has registered a trade mark in Great Britain shall be entitled to registration of his trade mark under this ordinance in priority to other applicants, and such registration shall have the same date as the application for registration in Great Britain; provided that this application is made within four months from his applying for protection in Great Britain.

Provided that nothing in this section contained shall entitle the proprietor of the trade mark to recover damages for infringements happening prior to the date of the actual registration of his trade mark in the Colony.

The use in the Colony during the period aforesaid of the trade mark shall not invalidate the registration of the trade mark. (Art. 61.)

#### *Colored Trade Marks.*

A trade mark may be limited in whole or in part to one or more specified colors, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of color it shall be deemed to be registered for all colors. (Art. 10.)

#### *Mode of Application.*

Any person claiming to be the proprietor of a trade mark may by himself or his agent apply to the Registrar for the registration thereof.

The application must be made in the prescribed form, and must be accompanied by not less than three representations of the trade mark and by a stereotype block of such representation.

The applicant must state the particular goods or class of goods in connection with which he desires his trade mark to be registered.

The application must be left with or sent by post to the Registrar.

The date of the delivery or receipt of the application shall be endorsed thereon and recorded in the Registrar's office. (Art. 12.)

Subject to the provisions of this ordinance the Registrar may refuse such application as aforesaid, or may accept it absolutely or subject to conditions, amendments or modifications.

In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the court.

An appeal under this section shall be made in the prescribed manner, and on such appeal the court shall, if required, hear

the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted. (Art. 13.)

#### *Opposition.*

Any person may, within three months, or such further time, not exceeding nine months in all, as the Registrar may allow, of the advertisement of the application, give notice to the Registrar of opposition to such registration.

Such notice shall be given in writing and in duplicate, and shall include a statement of the grounds of opposition. (Art. 16.)

#### *Assignment.*

A trade mark when registered shall be assigned and transmitted only in connection with the good will of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that good will. (Art. 26.)

#### *Infringement.*

In an action for the infringement of a trade mark the court trying the question of infringement shall admit evidence of the usages of the trade in respect of the get-up of the goods for which the trade mark is registered and of any trade marks or get-up legitimately used in connection with such goods by other persons. (Art. 48.)

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## SPAIN

The area of the Kingdom of Spain, including the Balearic Islands (1,935 square miles) and the Canary Isles (2,807 square miles) is 194,780 square miles.

The population, including the above islands, is estimated to be 19,712,585. Her colonies or distant possessions consist of Fernando Po, Annobon, Corisco and Eloby on the coast of Guinea and a part of the coast of Cape St. John and Bissayes in the Eastern Archipelago.

The principal minerals exported are coal, lead, zinc, antimony, copper and iron ores, iron pyrites and manganese. The lead mining industry is considered the most important in Spain, and the principal mines are in the provinces of Jaen and Almeria.

The foreign supply of coal in Spain is practically confined to the English market.



MONEY—The peseta (of 100 centimos) of the value of 1 franc=9½d. nominally=19 cents U. S.

WEIGHTS AND MEASURES—Metric system.

*Law.*

Law, June 7, 1902.

*Term.*

The maximum term for the registration of a mark is twenty years, counting from the date of the issue of the certificate, and the grant extends to all Spanish territories.

The registration of marks can be renewed by means of the same proceedings as are prescribed for the first registration. (Art. 51.)

*What Can be Registered.*

The following may use the mark: (a) Agriculturists, to distinguish the products of the soil, agricultural industry, stock breeding, and in general all operations in agriculture, forestry, or in obtaining products from the earth. (b) Manufacturers, to distinguish the products of their factory. (c) Merchants to distinguish the products which they buy for the purpose of selling again under their responsibility and guarantee. (d) Craftsmen, on the products resulting from the exercise of their skill or mechanical art; and (e) Persons who exercise any profession, to distinguish their own documents or their intellectual or manual productions. (Art. 23.)

*What Cannot be Registered.*

The following cannot be chosen as marks, signs or brands: (a) The national, provincial, or municipal coats of arms or bearings and the Spanish orders or decorations, at least without authority therefor; in this case they cannot by themselves constitute a mark, being merely additions to the principal mark. Authority may be given by the Ministry of Agriculture, Industry, Commerce and Public Works for the use of national arms and bearings; by the provincial boards of deputies and corporations for such as belong to them, and by the Ministry of State for the use of Spanish orders or decorations. (b) The arms, bearings, crests or mottoes of foreign States or Nations without the express consent of the Government concerned, and even if this be obtained they shall be regarded as additions to the principal mark. (c) Designations in common use in trade to distinguish goods or classes of articles and also technical or ordinary names adopted by general use to distinguish them. (d) Designs con-

trary to public morality and caricatures tending to hold up to ridicule ideas, persons, or articles worthy of respect. (e) Those marks which others have previously registered for the same class of products, goods, or articles, so long as the said right has not lapsed according to this law. (f) All marks which on account of their likeness or resemblance to others already granted, might lead to confusion and error. (g) Those referring to any religion whatsoever, if it can be inferred that the trade mark is intended to ridicule or disparage the same. (h) The badge, emblem, and device of the Red Cross; and (i) The portraits and names of living people, unless their permission has been obtained, and of deceased persons if the relatives within the fourth civil degree oppose the grant. (Art. 28.)

#### *Requirements.*

Certified copy of home registration, legalized by Spanish Consul; legalized power of attorney; five specimens of mark and one electrotype.

#### *Mode of Application.*

The documents that must be presented in order to obtain registration of a mark are:

1. An application to the Minister, formulating the petition for the mark whose registration it is desired to obtain, containing always in it the christian name, surname, or style and habitual domicile of the interested party, as well as that of his representative, if he should transact the business; the concrete enumeration of the products which the mark that is solicited is to distinguish, and an indication whether the mark has already been registered abroad or not.

2. A detailed description in duplicate in which is expressed with all clearness the class of the mark adopted, the figures and signs that it may contain, the goods upon which it will be affixed, imprinted or employed and the name of the owner. This description shall be written, typewritten or printed on sheets of paper 32x22 cm., with a margin on the left, in which shall be affixed a stamp of 5 centimos de peseta on each sheet.

To each one of the copies of this description shall be added, stitched, a sheet of equal size, or double, with the design of the mark desired to be registered, expressing its scale, and in which shall be represented the shadings, tints or colors which the interested party believes it convenient to employ, in order to give an exact idea of the mark. This sheet shall also bear affixed the corresponding revenue stamp.

The descriptions to which the preceding paragraphs refer shall be formulated in the Spanish language, without abbreviations, corrections or erasures.

3. Another similar description to the foregoing, written by

hand, typewritten, autographed, or printed on half sheets of foolscap written on one side only for its publication in the Boletín.

4. An engraving or electrotype, in order that the design of the mark may be printed in black, to be published jointly with the description in the Boletín. It shall be accompanied moreover by ten proofs or impressions of the mark referred to. This electrotype shall have at the maximum 10 cm. of length by 8 cm. in width.

The foreign subjects of the countries that belong to the Union, or that by virtue of the treaties enjoy the rights of reciprocity, must present a certificate of the registration in the country of origin of the mark. This document must be legalized by Consul, and the signature of the latter by the Minister of State. It will be sufficient if the translation of the certificate be private.

In the affirmative case the documents shall be sealed and signed by the Secretary, cancelling the revenue stamps and if there should be no defects in the documentation, such as the lack of the electrotype or of the descriptions, they shall be published immediately in the Boletín Oficial de la Propiedad Intelectual e Industrial.

If defects shall be found in the papers they shall be stated in the application papers and there shall be conceded a term, that shall not exceed two months, in order that the interested parties or their representatives may amend them.

The publication of which the preceding article speaks being made, and counting from its date, a term of two months shall be conceded in order that those who believe that they have a right to oppose a mark, may formulate the corresponding opposition by means of a notice presented to the Ministry.

#### *Assignments.*

In order that the assignment and transfer of the rights of industrial property in their various manifestations may have effect against third parties, it is indispensable that it be done by a public document.

The registration of every act involving a modification, whatsoever may be its importance, in a right of industrial property, must be effected directly by presentation at the Office of the Registry of Industrial Property of a notarially legalized copy of the act or contract of cession or modification of the right, accompanying it with 15 pesetas in Government stamped paper for the fees of registration.

The official charged in the Registry with the entry into the corresponding book of the transfers and modifications of the rights of industrial property, after having satisfied himself by the examination of the registry books and of the respective files that the mark had all its legal validity at the date of the execu-

tion of the act of transfer, shall enter the particulars on the respective file and shall propose the entry and that the corresponding certificate shall be issued in favor of the new proprietor if he may have solicited it.

There shall be published monthly in the Boletín de la Propiedad Intelectual e Industrial a detailed statement of the transfers and modifications of the rights of industrial property which have been registered in the preceding month.

#### *Forfeiture of Marks.*

Marks shall lapse:

1. For having outrun the time fixed for their duration.

As the registration of marks is renewable, the interested parties must demand in order to avoid the declaration of lapsing, the renewal before the expiration of the term of twenty years for which they were conceded.

2. For lack of payment of any of the quinquennial taxes established in Article 52 of this law.

3. By the extinction of the personality to whom belonged the use of the mark, without being legally substituted by whoever is to succeed him, or by the failure to use the said mark during three consecutive years, unless in cases of force majeure duly proved.

4. By final sentence of a competent court, but only as regards the person defeated by the judgment.

5. By the wish of the interested party.

6. At the instance of persons or corporate bodies who, by virtue of the present law, may have right to the use of the marks, who may demand at any time the lapsing of those already registered, presenting to this effect the necessary justifications; when as the result of these, questions of ownership and possession arise, the Minister shall suspend the course of the administrative proceedings, and shall refer the parties to the ordinary courts in order that they may establish the rights to which they believe themselves entitled.

The lapsing may be declared *de oficio* by the Administration when it is possessed of the necessary data for doing it.

Three months having passed from the publication in the Boletín de la Propiedad Intelectual e Industrial of the lapsing of the registration of a mark, this distinctive sign shall remain free, at the disposition of whoever may desire to adopt it and to solicit a new registration in his name according to the present law.

#### *Classification.*

##### FIRST GROUP—AGRICULTURE AND ALIMENTATION.

CLASS 1. Farming implements, agricultural machines.

CLASS 2. Manures, fertilizers, latrines, insecticides.

CLASS 3. Agricultural and forestry exploitations, cattle raising.

CLASS 4. Horticulture, gardening, agriculture and sericulture.

CLASS 5. Cereals, milling, bread making, pastes and starches.

CLASS 6. Food substances and preserves, receptacles.

CLASS 7. Sugars, coffees, chocolates, pastry, confectionery, syrups.

CLASS 8. Vine culture, wines, beers, vinegars.

CLASS 9. Distilling, alcohols, spirits, liquors.

CLASS 10. Gaseous drinks, artificial ice, refrigerators.

#### SECOND GROUP—MINING AND METALLURGY.

CLASS 1. Exploitation of mines, quarries, baths and mineral waters.

CLASS 2. Combustibles, hydrocarbons and agglomerates.

CLASS 3. Industrial furnaces and kilns, gasogenes.

CLASS 4. Smelting and manufacture of iron and steel.

CLASS 5. Forging, rolling and tempering iron and steel.

CLASS 6. Various metals, alloys, amalgams.

CLASS 7. Wires, needles, pins, nails.

CLASS 8. Cables, chains, metallic textures.

CLASS 9. Sheet iron, tin plates and beaten tin.

CLASS 10. Tools, implements, machines.

#### THIRD GROUP—MOTORS AND MACHINES.

CLASS 1. Motors for muscular force.

CLASS 2. Air motors, windlasses.

CLASS 3. Hydraulic motors.

CLASS 4. Gas and various motors.

CLASS 5. Steam motors.

CLASS 6. Steam generators, boilers in general.

CLASS 7. Accessories for motors and steam generators.

CLASS 8. Organs of transmission and similar articles.

CLASS 9. Compressing presses, filter-presses.

CLASS 10. Various machines and apparatus.

#### FOURTH GROUP—CHEMICAL INDUSTRIES.

CLASS 1. Illuminating gas and its accessories.

CLASS 2. Oils and fats, candles, soaps, lye.

CLASS 3. Wax chandlery, perfumery, essences.

CLASS 4. Gums, resins, varnishes, caoutchoucs, japans, gut-tapercha.

CLASS 5. Colors, dyeing materials, inks, mordants, driers, enamels.

CLASS 6. Albumen, gelatine, glues.

CLASS 7. Hides and skins, tanned leather, leather straps, blacking.

CLASS 8. Paper of all kind, card board.

CLASS 9. Painted papers, cigarette paper.

CLASS 10. Chemical, pharmaceutical and various products and processes.

CLASS 11. Explosives for industrial uses.

#### FIFTH GROUP—TEXTILES AND CLOTHING.

CLASS 1. Defibration, preparation, spinning and twisting.

CLASS 2. Woven goods of all kinds.

CLASS 3. Stiffening, bleaching, dyeing, printing.

CLASS 4. Knitted goods, nets or webs.

CLASS 5. Tullies, embroidery, laces, silk laces.

CLASS 6. Sewing machines, braiding machines, etc.

CLASS 7. Linen goods, corsets, dresses, hats.

CLASS 8. Fancy trimming, haberdashery, gloves, ties.

CLASS 9. Umbrellas, canes, fans, flowers and feathers.

CLASS 10. Footwear, cordage, articles made of Spanish grass hemp, mats.

#### SIXTH GROUP—LIBERAL ARTS—DOMESTIC ECONOMY AND SMALL INDUSTRIES.

CLASS 1. Works of art, engraving and photography.

CLASS 2. Typography, lithography and their derivatives.

CLASS 3. Music, instruments and accessories.

CLASS 4. Jewelry, hardware, and writing and drawing materials.

CLASS 5. Furniture, upholstery, decorations and material for teaching gymnasia.

CLASS 6. Culinary art, domestic chattels, kitchen utensils.

CLASS 7. Cutlery, table articles, bottling corks.

CLASS 8. Basket making, Morocco leather, turning, card-board and other boxes.

CLASS 9. Tobacco, phosphorus, articles for smokers.

CLASS 10. Toys, dolls, sundry industries.

#### SEVENTH GROUP—ELECTRICITY AND SCIENTIFIC INSTRUMENTS.

CLASS 1. Products, accumulators, conductors, lightning conductors.

CLASS 2. Electric lighting, electric traction.

CLASS 3. Telegraphy, telephones.

CLASS 4. Various electric apparatus.

CLASS 5. Watch-making, instruments of precision.

CLASS 6. Meters of all kinds, caligraphic apparatus.

CLASS 7. Testing apparatus, pharmaceutical accessories.

CLASS 8. Medical and surgical instruments and apparatus.

CLASS 9. Physical, chemical, astronomical and geodetical instruments.

CLASS 10. Weights and measures and instruments for weighing.

#### EIGHTH GROUP—CONSTRUCTION.

CLASS 1. Materials: timber, lime, cement, asphalt, artificial stone.

CLASS 2. Ceramics, bricks and tiles, pottery, earthenware, porcelain, glass.

CLASS 3. Locks, carpentry, cabinet making, Venetian blinds.

CLASS 4. Bridges, roofs, enclosures, pavements.

CLASS 5. Foundations, dredging, sounding, perforating.

CLASS 6. Construction, architectural works, scaffolding.

CLASS 7. Heating, ventilation, lighting, sanitation.

CLASS 8. Lifting apparatus, capstans, lathes, elevators.

CLASS 9. Raising and conducting of water and other fluids.

CLASS 10. Fire extinguishing materials, incombustible products.

#### NINTH GROUP—VETERINARY SCIENCE, HUNTING, FISHING AND TRANSPORTATION.

CLASS 1. Veterinary science, domestic animals.

CLASS 2. Aviculture, hunting, utensils.

CLASS 3. Pisciculture, fishing, apparatus.

CLASS 4. Carriage-making, velocipedes (bicycles).

CLASS 5. Harness and accessories.

CLASS 6. Railways, stationary and rolling material.

CLASS 7. Sea and river navigation.

CLASS 8. Aerial navigation, parachutes.

CLASS 9. Life-saving, safety and swimming apparatus.

CLASS 10. Transportation and funeral effects.

#### TENTH GROUP—MILITARY ART.

CLASS 1. Powders and explosives.

CLASS 2. Cartridges and projectiles.

CLASS 3. Portables and other fire-arms.

CLASS 4. Guns and carriages.

CLASS 5. Batteries and armors.

CLASS 6. Torpedoes and torpedo boats.

CLASS 7. War vessels.

CLASS 8. Sanitary material.

CLASS 9. Field material.

CLASS 10. Equipment, various articles.

Marking Goods: "Marca Registrada."

*Indications of Origin.*

It is understood by indication of origin the designation of a geographical name, as a place of the manufacture, elaboration or extraction of a product.

The name of a place of production belongs collectively to all the producers that are established in it.

No one has a right to use the name of a place of manufacture in order to designate a natural or manufactured product coming from another place.

Falsity of indication of origin is not incurred when a geographical name is used for the denomination of a product, which, being already generic, indicates in commercial language the nature and name of origin of the product. This exception is not applicable to the products of the vine.

Foreign products with the marks of Spanish producers remain prohibited and will be seized upon their entrance at Spanish custom houses, and whether the marks are completely new or constitute a modification or falsification of registered marks, the proprietors of the false marks retaining the rights, that the law recognizes.

Goods manufactured either in Spain or in foreign countries, may bear, respectively, the name or mark of a foreign or Spanish merchant, on condition that the indications of the country of manufacture, or of production, are plainly visible and that the proper authorization for using them has been obtained.

Notwithstanding the provisions in the preceding article, the courts shall consider as a presumption of false indication of origin the fact that objects imported from a foreign country not being Spanish-American, bear a Spanish mark or inscription in the Spanish language. If the products imported from a foreign country bear a name of origin that is identical with or similar to that of a place within Spanish territory, such name must be followed by the name of its nation.

*Unfair Competition.*

It is understood by unfair competition all efforts to avail oneself unfairly of the advantages of an industrial or commercial reputation acquired by the efforts of another who may have his present protected by the present law.

The following are considered as acts constituting unfair competition:

(a) The imitation of the address-plates or show-bills of shop windows, façades, furniture, or anything else that may give rise to confusion with another establishment of the same class contiguous or very close by.

(b) The imitation of the wrappers used by a competitive house in such a form that it may induce to confusion.



(c) To select as a firm name a title in which is included the name of a locality known for the existence of a renowned establishment with the object of illicitly availing oneself of its reputation.

(d) To knowingly disseminate false assertions against a rival with the object of depriving him of his clients.

(e) To publish advertisements, announcements or newspaper articles which tend to depreciate the quality of the products of a competitor.

(f) To advertise oneself in a general way and contrary to the reality of the facts as the depository of a national or foreign product.

(g) The employment, without competent authorization, of indications or terms such as "prepared according to the formula of" or "prepared according to the process of manufacture of" unless the formula or the process belongs to the public domain.

#### *Jurisdiction.*

Civil actions in matters of industrial property shall be instituted in the domicile of the defendant. If the claim is directed at the same time against the grantee of the right to the title relative to such property and one or more of his grantees or agents, the competent Judge or Court will be that of the domicile of the grantee. If the claim is set up against two or more grantees or agents the competence of the Court shall be determined by the domicile of any one of them, at the election of the plaintiff.

In criminal actions and proceedings the competency is regulated by the provisions referring to legal proceedings of this order.

Civil claims are adjusted by the rules prescribed by the law of civil proceedings, according to their importance, criminal actions by those that the law provides for criminal procedure.

In all judicial actions that have for their object to declare the nullity or lapsing of a trade mark, the Public Prosecutor shall be a party.

In the case of the preceding article, all those deriving rights from the registrant, according to the Registry of Industrial Property, must be summoned before the legal tribunal.

As soon as the nullity or lapsing is judicially declared of a trade mark, the Court shall communicate the sentence that it may have caused to be executed to the Ministry in order that it may take cognizance of it, and the nullity or lapsing may be published in the Boletin in the same terms and at the proper time that this law orders for the publication of trade marks.

#### *Fees.*

The registration of a mark will be subject to the payment of a tax of 100 pesetas in stamped paper to the State, that is to be satisfied for periods of five years and progressively, in this form:

That of the first five-year period, which will be 10 pesetas for trade marks, will be payable within fifteen days of the publication of the concession of the mark; those of the three remaining five-year periods are to be satisfied before the termination in each year of that month in which the certificate was issued, paying 20 pesetas in the second five-year period, 30 in the third and 40 in the fourth.

The fact of not paying any of the taxes set forth in the preceding article will be considered as a renunciation on the part of the interested party of the benefits of the registration and in virtue thereof the same will be forfeited.

#### *Trade Names.*

By trade name is understood the name, firm name, or designation under which an agricultural, manufacturing or mercantile establishment is made known to the public.

The following shall be considered as the name of an agricultural, manufacturing or mercantile establishment:

(a) The surnames, with or without the christian name, in full or abbreviated, of agriculturists, of manufacturers, or of the merchants that possess them.

(b) Styles or signatures of firms.

(c) The designations of mercantile companies in all their forms.

(d) Fancy or especial designations; and

(e) The designations of lands, destined for agricultural, industrial or commercial enterprise.

Independently of the mercantile registration of which Article 16, of the Code of Commerce treats, all agriculturists, industrials or merchants, Spanish or foreigners domiciled in Spain, may request, individually or collectively, the inscription in the register of industrial property, of his respective trade name.

The registration of a trade name is effective, but will only constitute this exclusive ownership by means of this procedure, which, from the date of the inscription, will produce legal effects.

When a name or a denomination is employed at the same time as a mark and as a trade name, it must be entered separately in the two registers, because the first represents the distinctive mark for the objects elaborated and offered to the consumer, and the second is only applied to the samples or showbills, cases and other accessories used in order to distinguish the establishment.

The registration of a trade name will be denied:

(a) When the name, firm name or denomination is not distinguished sufficiently from another trade name already registered.

(b) When without the express consent of the proprietor of a trade name already registered, accredited by a legal document,

these words are used: "formerly establishment of—," "formerly factory of—," "formerly manager of—," "formerly chief of the workshop of—," "employe of—," "ex-director of—," etc., "successor or successors of—," "branch office of—," or "representative of—," or other similar terms.

If for any of these motives or on account of opposition in accordance with the preceding paragraph, the petition for registration is not acceded to, the interested party will be notified to the end that he may modify, complete or retire his petition.

The possessor of a certificate of registration of a trade name is the only one that may add to his name the mention of "registered."

The modifications and changes of a trade name will be the object of a new registration.

The possessor of a registered trade name has the same rights that belong to the possessor of a registered mark.

*Law in Force in Spain to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No special steps are taken to prevent the importation of goods bearing a false indication of origin; but the stipulation of the Convention of Paris (1883), the Arrangement of Madrid for the prevention of false indications of origin (1891), and the Additional Acts of Brussels (1900) are generally in force. The importation of goods bearing a false indication of Spanish origin or bearing falsified or imitated Spanish trade marks is prohibited by the Law of Industrial Property (1902). This law also prohibits the use of the name of a place of manufacture to designate a manufactured or natural product coming from another place. The sale of articles bearing a false Spanish trade mark is a punishable offense under the Penal Code. Foreigners, whose States are not members of the Industrial Property Union only possess trade mark rights in virtue of special treaties, and in cases where there are no treaties, the principle of reciprocity is observed. At the demand of an interested party, a fine may be imposed on persons employing false indications of origin. Civil, or criminal actions may be brought against infringers of Spanish trade marks. The cost of a civil action would be, at most, between \$1,000 and \$1,400; of a criminal action nil, as the States prosecute. Goods manufactured either in Spain or abroad may bear respectively the name or mark of a foreign or Spanish merchant, provided the indication of the country of manufacture is clearly visible and that the proper permission to use the name or mark has been obtained.

*Infringement.*

The following shall be punished with a fine of from twenty-five to 125 pesetas:

- (1) Those who use a mark or an industrial design or model

without possessing the corresponding certificate of ownership, allowing it to be inferred by using the word "registered," or any similar word, that they possess such a certificate.

(2) Those who being legitimately owners of a mark, apply it to articles different from those for which it was granted.

(3) Those who having changed the total or partial configuration of the mark, design, or model, apply to it the expression "registered," or a similar expression, without having actually registered the modification.

(4) Those who remove from goods the marks of the producer without his express consent, in order to deal with these goods, although they do not apply said marks to other goods.

Second offenses, by which is understood offenses by persons punished for the same offense within the preceding five years, shall be punished with a fine of from 125 to 250 pesetas.

In case of insolvency, an offender shall suffer corresponding imprisonment, according to Article 50 of the Penal Code. (Art. 136.)

Any person using forbidden marks shall be punished with a fine of from 250 to 500 pesetas. (Art. 137.)

#### *Trade Mark Rights Under the Spanish Law.*

The first Spanish trade mark law, that of November 20, 1850, provides that, so far as concerns the operation of that law, only those marks shall be considered as marks in use, for which certificates of registration have been obtained. An eminent Spanish commentator says regarding this section, while the use of marks for which no registration has been obtained is not prohibited in the country, no right is acquired by such use. The certificate of registration alone confers the right to the mark in the country and in the colonies, and authorizes the prosecution of civil actions and criminal proceedings, against those who, in any manner, infringe upon the industrial property right thereby secured.

By royal ordinance of April 11, 1858, the property in trade marks was declared similar to that in movable property. This ordinance, however, had to do primarily with the assignability of trade marks. A petition having been made by an association of paper manufacturers of Alcoy, requesting that the titles to trade-marks, granted under the law of 1850, be declared assignable like any other property right, a royal ordinance was issued, construing the law in this particular. After reciting the facts above mentioned, this ordinance stated that no such declaration as that sought was necessary; that the law of 1850 assimilated the right in trade marks, that were registered and authorized by law, to that in personal property and, therefore, such marks were capable of being conveyed or assigned, like any other species

of personal property. It was accordingly decreed, that, for the information of the administration and the better protection of assignees, any devolution of title to a trade mark should be recorded, within the period of three months after the event.

The supreme court of justice, by a decision of May 5, 1887, declared that:

"Marks of trade and of commerce constitute a species of industrial property, as legitimate and reputable as the others which the law recognizes, and the law consents neither to the use of such marks, with indications calculated to mislead the purchaser as to the character of the product, nor to the imitation thereof, in such a manner that one may be led into confusion, or error, by mistaking the imitation for the genuine mark."

In a decree of the same court, of December 14, 1887, it was recited that:

"Names and industrial devices, like marks of trade and commerce, are the symbol of credit of the person or company to whom they belong, and constitute a species of property, as legitimate and respectable as the others recognized by law, and in view of this fact, neither does the law consent to the usurpation of such marks or commercial mottoes, nor is it lawful to aim at their imitation, with alterations or additions more or less intentional, which visibly tend to deceive or lead into error the inexperienced purchaser, as to the nature and source of the thing or object sold."

The same court, on February 27, 1890, further remarked, citing the preceding cases:

"If the name of an industrial establishment is the symbol of its credit and constitutes a species of property, as legitimate and reputable as any recognized by the law, it is obvious that the appellant has no right to use upon his shop located in one of the streets of the capital, the name, "Bake Shop of Batin," which is the name of the establishment of the appellee, previously located in another portion of the city; and that, for the same reason, he has no right to employ the name of Batin upon his labels, bill heads and stationery; for the reason that the use of this name, which is an indication of origin, and which really constitutes the mark of distinction of the older establishment, may lead the consumer to error and cause the one shop to be confused with the other." (Dindurra, *Marcas de Fabrica y de Comercio*, Madrid, 1892, pp. 34, 40, 157, 175, 187.)

Under date of May 16, 1902, the present trade mark law of Spain came into force. This law recites that the right of property in marks is equivalent to the right of property in personality, that the manner of acquiring this property is that recognized by the civil law; but, to enjoy the benefits of the present law, it shall be necessary to obtain a certificate of registration of the trade mark in the manner prescribed.

The civil court of Barcelona, under date of April 14, 1904, passed upon an application for the cancellation of a registered mark, at the suit of another who had not registered his mark, but who claimed to be the lawful owner thereof, by virtue of priority of use. The decision contained the following language:

"Considering that the contention of the defendant (pursuant to which the plaintiff company, not having caused its mark, "The Eagle," to be registered, must be deprived of all action and can have no right to prevent a third person from making use of the same mark) can not be taken into account, since the action instituted by this company has for its purpose, not the prosecution of a third person, who has employed the mark and from whom it seeks to recover damages; but is confined solely to asserting its civil right of property in this mark, and to demanding the annulment of a title, which the company consider as illegal, as well as the cancellation of the registration made in favor of the defendant;

And considering the fact that the property in marks of trade and commerce is assimilated to the property in movable goods, that a title by prescription is given by possession in good faith, without interruption, during three years, as well as by the uninterrupted possession during six years under any circumstances: It is evident not only that the plaintiff company has the right to require, as it has done, the cancellation of the trade mark registered and of which the representation of an eagle is the principal element, but also that it ought, for the same reason, to be discharged of liability, under the counterclaim interposed by the defendant." (*Fabriques Reunies, etc., vs. Serra et Planchon, La Propriété Industrielle, 1905, p. 25.*)

In remarking upon this case, the editor of *La Propriété Industrielle*, says, it has been generally considered, up to the present time, that, in Spain, one can acquire no right to a mark outside registration. The right to a mark has been treated as assimilated to that in personal property, under the old law as under the new; but it was supposed that this principle applied only to the transmission of the mark, and not to its acquisition by priority of use. The above judgment which, by the failure to appeal, has become law, is based upon a different doctrine, that may be summarized as follows: Only the registration of the mark gives a right of action for infringement and for the recovery of damages; but priority of use confers upon the first user the right to the mark, and enables the latter to establish the right to his mark, unlawfully registered in favor of the third party, and to demand the cancellation of such wrongful registration. This right of action is lost by prescription in three years, or in six years, after the misappropriation of the mark by the third person, the period depending upon the conditions recited in the above decision.

*Priority of Use.*

Although it has been commonly understood that the law for the registration of trade marks in Spain made the right to exclusive use dependent upon registration, a recent decision of the Circuit Court of Barcelona has somewhat modified the application of this rule in favor of the prior owner of a mark who has been anticipated in the registration by another and wrongful user thereof.

La Propriété Industrielle discusses fully the effect of this decision and states its effect to be that the registration of the mark is essential to the prosecution of an action for infringement or to the recovery of damages, but that priority of use gives a right to the mark which enables the first user to procure the cancellation of any wrongful registration of his mark by another in the Federal register. This action after the analogy of the statute of limitations applicable to personal property, is lost in three years, when the claim of the registrant is made in good faith and without the knowledge of the rights of the prior user, and in any event in six years, after registration of the mark by another. (Fabriques c. Serra et al., La Propriété Ind., 1905, p. 25.)

*Marks in Foreign Languages.*

The Spanish law for the registration of trade marks provides that descriptions of marks registered shall be given in the Spanish language. The question has arisen in the office of registration whether this requires that all marks themselves should be in the Spanish language. The Council of State under date of November 13, 1905, issued a decree construing the provisions of the law in this respect. In this decree, the council says, in substance: Neither the registration office nor the registrants have ever interpreted this provision in the sense that the mark itself must be written in the Spanish language, and a great many marks in foreign languages have been registered under the law. The same is true in foreign countries. None of them prohibits absolutely the use of marks consisting of words or phrases not belonging to the language of the country. Consideration of good faith and liability to deception have come, however, to have a controlling influence in all countries, with a view to causing marks so far as possible to conform with the facts and to avoid deception. Thus alone is it possible to put an end to that species of unfair competition, unfortunately very common, through which the reputation of a region or a manufacturer is misappropriated by a mark giving a misleading impression as to the source of production or manufacture. The interest of Spain in this question consists in the fact that marks placed upon products of Spanish origin should show the source of production and should not be permitted to be so used as to mislead.

It is the opinion of the Council of State, therefore, that the provision permitting marks to be set forth in a foreign language should be subject to this qualification, that the mark should not be such as to convey false information as to the origin or source of production of the product. Accordingly the Council instructs the registration office that native registrants of such marks shall indicate upon their marks in a conspicuous place and in distinct characters, the locality in Spain where the product is manufactured, together with the name of the manufacturer; that marks complying with these conditions be passed without delay, but that others, where the applicant refuses to comply with these requirements, be rejected. (*La Propriété Industrielle*, 1906, p. 128.)

#### *The Trade Name "Toledo" Upon Cutlery.*

The Spanish customs authorities have seized in the customs house cutlery of German make bearing the name "Toledo." This action was taken under the authority of the Spanish law which forbids the use of the name of a place or locality upon a natural product or article of manufacture made or produced in a different place or locality. Under the Spanish law the right to the use of a geographical name is common to all producers located in the place or territory designated thereby. Goods so marked as to falsely indicate a place or region in Spain as that of origin are subject to seizure upon importation. This legislation is a local application of the terms of the international agreement concluded in 1891 at Madrid, and to which France, Great Britain, Spain, Portugal, Switzerland, Brazil and Tunis are parties, aimed at the suppression of false marks of origin. By this convention each country undertook to prevent within its own territory the use of marks of origin falsely referring to places or localities within any of the other countries to the union. An exception is made in the case of names which have come to have a generic significance as applied to goods, having lost their force as indications of origin.

#### *Cancellation of Registration.*

The Spanish law of industrial property of 1902, provides that a registration shall be extinguished in certain cases, among others, by the death of the person in whose name it was made without the right of succession passing to another, or by abandonment of the mark during three years. There is a further provision in the article that upon the application of persons who have a right to the use of marks, registrations of similar marks already upon the record may be cancelled. Under the latter clause many applications were filed for the cancellation of marks, based principally upon the fact, as alleged, that the marks in



question should not have been registered in the first place, being marks common to the trade, or that the mark had been registered by mistake, although so nearly resembling other marks registered at an earlier date as to be calculated to produce confusion. In this situation the Bureau of Industrial Property referred to the Council of State the question of the construction of this clause. The Council of State in an opinion holds that the two clauses above mentioned shall be construed together, and that the provision for the cancellation of registrations by the officials of the registration office refers to marks which have been abandoned during the stated period, or which have lapsed by the death of the registrant and the failure of succession.

It is held that the office of registration is not competent to correct any errors that may have been made in the admission of the marks not originally entitled to registration on grounds such as have been mentioned. Only the courts of law have jurisdiction of controversies arising out of alleged wrongful registrations. The duties of the registration office are limited to the hearing of evidence where the facts relied upon have arisen after the registration, and, if the facts are proven, declaring the registration to have lapsed. (*La Propriété Industrielle*, 1906, p. 147.)

#### *Registrability of Insignia of Royalty.*

The question has lately arisen as to the registrability, under the Spanish law, of two trade marks, comprising, among other features, the representation of a royal crown. The Spanish law provides that national decorations or insignia cannot be adopted as trade marks, unless their use be authorized, in which case they can only be accessory to the principal design. In construing this clause, it was held that inasmuch as, in this instance, the representations of the crown were only accessory and combined with other and more distinctive features, there was no difficulty in admitting such marks to registration, as the minister could authorize the use thereof in the manner indicated and register the marks accordingly. (*La Propriété Industrielle*, 1910, p. 61.)

#### *Protection of Trade Marks in Colonial Possessions.*

Registration in Spain affords protection to a trade mark throughout her colonial possessions.

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## ST. HELENA

This island embraces an area of 47 square miles. The population in 1911 was estimated at 3,800.

The imports are groceries, wines, beers and spirits, cotton and woolen goods, hardware, etc., from the United Kingdom.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Laws.*

There are no special regulations as regards trade marks, the laws in force in Great Britain being taken for guidance according to paragraph 23 of Ordinance 3 of 1885.

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 ST. LUCIA

The area of this island is 233 square miles. The population in 1911 was estimated at 55,600.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Law.*

Merchandise Marks Ordinance, 1888, No. 22.

*Duration.*

Fourteen years; renewable.

*What May Be Registered.*

A name of an individual or firm, printed, impressed or woven in some particular or distinctive manner; or

A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

A distinctive device, mark, brand, heading, label, or ticket.

An invented word or invented words; or

A word or words having no reference to the character or quality of the goods, and not being a geographical name.

There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures or combination of letters, words, or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of added matter, and a copy of the statement and disclaimer shall be entered on the register.

A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

Any special and distinctive word or words, letter, figure or combination of letters or figures or of letters and figures used

as a trade mark before August 13, 1875, may be registered as a trade mark under this Act.

*Requirements.*

Authorization to agent signed by applicant or applicants; full name, address and occupation of applicant; full description of goods to be covered; wood block or electrotype of the mark, preferably not more than two inches in breadth and width, otherwise additional space is required for advertising, which must be paid for; six copies of the mark.

*Classification.*

Same as in Great Britain.

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## ST. VINCENT

The area of this island is 132 square miles; the population in 1911 was estimated at 52,800. The principal products are cotton, sugar and arrowroot.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

*Laws.*

Merchandise Marks Ordinance, 1888, No. 8.

*Duration.*

Fourteen years; renewable.

*What May Be Registered.*

A name of an individual, or firm, printed, impressed, or woven in some particular or distinctive manner; or

A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

A distinctive device, mark, brand, heading, label or ticket.

An invented word or invented words; or

A word or words having no reference to the character or quality of the goods, and not being a geographical name.

There may be added to any one or more of the essential particulars mentioned in this section any letter, words, or figures, or combination of letters, words or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark,

and must disclaim in his application any right to the exclusive use of added matter, and a copy of the statement and disclaimer shall be entered on the register.

A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

Any special and distinctive word or words, letter, figure, or combination of letters or figures or of letters and figures used as a trade mark before August 13, 1875, may be registered as a trade mark under this Act.

#### *Requirements.*

Authorization to agent signed by applicant or applicants; full name, address and occupation of applicant; full description of goods to be covered; wood block or electrotype of the mark, preferably not more than two inches in breadth and width, otherwise additional space is required for advertising, which must be paid for; six copies of the mark.

#### *Classification.*

Same as in Great Britain.

## STRAITS SETTLEMENTS

The Straits Settlements, constituting together a single British Crown Colony, are situated on the islands immediately adjacent to the Malay Peninsula, at the southern extremity of which lie Singapore, the capital and principal port, and Penang and Malacca, the other ports. The area of the colony is 1,526 square miles. A railway has been constructed between Singapore and Kranje, the nearest point on the island of Singapore, to Johore on the mainland. The population is estimated at 640,816.

**MONEY**—The Straits Settlement silver dollar of 1904 is the standard coin—2 s. 4 d.—56 cents U. S.

**WEIGHTS AND MEASURES**—Same as Great Britain.

#### *Law.*

In the Straits Settlements there is no trade mark law nor a trade mark register. The Merchandise Marks Ordinance of 1888 now in force, refers, in Section 3.1, to the English Patents, Designs and Trade Marks Act of 1883, which, however, never became a law in the Straits Settlements. In addition the Straits

Settlements Penal Code of 1887 provides in Sections 478 and 479 penalties for the misuse of protected trade marks. It is, therefore, really doubtful whether and to what extent trade marks legally registered in Great Britain or other countries are protected in the Straits Settlements. The answer has up to this time been doubtful.

In order to remedy somewhat the disadvantages arising from this state of affairs for manufacturers and merchants, the Singapore government has decided that trade marks entered in the Trade Mark Register in the Patent Office in London can be recorded in the Straits Settlements by the Registrar of Imports and Exports. This registration has in itself no real effect, but it is to be considered a means of proof (subject to a free judicial estimate of its value as evidence), by which a presumption may eventually be created that the mark of the firm in question was the first to be introduced into the colony.

The registration has as a pre-requisite the previous registration of the mark in England. Then the Singapore Registrar of Imports and Exports must be furnished for this purpose, a certificate of the English Registry, together with three facsimiles of the mark and one dollar.

By the Labuan Ordinance 1907, transferring the administration of the government of the Colony of Labuan to the Government of the Straits Settlements, Trade Marks Ordinance, V of 1902 and IV of 1893, are now abrogated. In future, trade marks registered in the Straits Settlements will ipso facto extend also to Labuan.

A British trade-mark once registered remains on the register without renewal. In the event of a transfer of proprietorship, the assignee must re-register, and in addition to the papers named below a deed of assignment or other proof of subsequent proprietorship is required.

To effect registration of a trade mark as above are required a certificate of registration in Great Britain, and four copies of the mark.

To advertise other trade marks in the local papers we require: the name, address and business of the proprietor, description of the mark and of the goods to which it is applied, and an electro or wood block.

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## SUDAN

It has been decided that all trade marks for which protection has been obtained in the Mixed Tribunal of Egypt shall be equally protected in Sudan; still we advise advertisements in the Sudan Government Gazette, which has been held sufficient proof of lodgment of claim.

## SURINAM

The area of Surinam is 46,060 square miles. Population is estimated at 84,103. Surinam is situated on the coast of the Atlantic Ocean and is separated by two large rivers, the Marowin and the Corantin, from French and British Guiana. From south to north run the following rivers, all navigable for vessels: The Commewine, the Surinam, the Saramiaccas, the Coppename and the Nickerie. Along the river banks, in the alluvial part of the country, there are sugar, cocoa, rubber and coffee plantations. More to the south three regions of mountainous land furnish gold, balata and timber.

MONEY—Dutch florin=100 cents= 1 s. 8 d. (about)=40 cents U. S.

WEIGHTS AND MEASURES—The metric system.

*Law.*

Provisions of the Law of November 9, 1893, as amended by the Law of May 31, 1905.

*Term.*

Twenty years.

*Renewal.*

The registration may be renewed before the expiration of the 20-year period for a similar term.

*Requirements.*

Registration must be applied for at the branch office of the Industrial Property Office at Paramaribo.

Power of attorney (no legalization). One power can be used for several applications filed at the same time. When the power is signed "pro procura," proof must be shown to the effect that the proxy is authorized to sign for this purpose.

Ten copies of the mark.

Electrotype measuring in length and width not under 1.5 cm. and not exceeding 10 cm. This electrotype is used for the publication of the registration in the *Gouvernements Advertentie-Blad* (Official Gazette) of Surinam. The electrotype is not returned.

Description of the mark and a statement of the goods for which it is to be registered and also the manner in which the mark is used, and whether a claim is made for its use in a particular color or colors. When such claim for a color or colors is made, twenty copies of the specimen is required.

A statement of the full name, occupation and postoffice address of the applicant is necessary.

The formalities and the procedure, etc., are substantially the same as in Holland, with the exception that in Surinam an appeal from the refusal by the Registrar must be lodged within a period of three months, and that there is no appeal from the decision of the "Raad van Justitie" to a higher court.

*General Information.*

Classes of goods, which necessitate registration in each class separately, do not exist in Surinam. It is therefore possible to register a mark for a great number of goods by one single application, but it is advisable to divide them into groups so as to obtain broad protection. The mark can only be registered in respect of the goods for which it is practically used, and not for goods which the applicant intends to use later on. If the applicant's name, occupation or any printed matter on the mark gives rise to the supposition that the applicant does not deal in the goods mentioned in the application, the Registrar may refuse registration for those goods that do not fall under applicant's business.

A mark composed of several parts may be protected by one single registration.

*Assignments.*

For registering an assignment it is absolutely necessary that the good will and business of the original proprietor of the trade mark shall also be assigned to the subsequent proprietor. For assignment the following documents are necessary:

Power of attorney (no legalization).

A copy of the assignment of the business of the proprietor. This document must be executed before a Notary and legalized by a Dutch Consul; it is not returned.

A certificate of transfer is also published in the official papers.

A mere change in the name of proprietorship can only be recorded in the trade marks register by payment of the same government fees and by fulfilling the same formalities as for assignments.

Marking Goods: (See Holland.)

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## SWEDEN

The kingdom of Sweden, consisting, besides several islands, of the eastern and greater part of the Scandinavian peninsula, extends from 55 deg. 20 min. 18 sec. to 69 deg. 3 min. 21 sec. north latitude, and from 10 deg. 40 min. to 22 deg. 30½ min. east longitude of Greenwich. The area of Sweden is somewhat larger than that of Norway, comprising about 172,000 British square miles; its greatest breadth is 266, and its greatest length

1,500 British miles, and the coast line is about 2,500 kilometres. The population is estimated to be about 5,476,500.

The manufacture of matches is a very considerable industry of the country. They are shipped principally to Great Britain and Lubeck. The manufacture of wood pulp is also an important industry, and one that is steadily increasing, the material being exported to all paper making countries. The country is very rich in minerals.

MONEY—The krona, which is divided into 100 öre and is equal to 1 s. 1 1/3 d. (about)=27 cents U. S.

WEIGHTS AND MEASURES—The metric system.

#### *Law.*

Law of the 5th of July, 1884. Amended the 5th day of March, 1897, and 16th of June, 1905.

#### *Duration.*

Ten years, renewable for like periods.

#### *Requirements.*

Certified copy of home registration and power of attorney, five copies of mark and two electros.

A trade mark may not be registered:

1. If it consists only of figures, letters or words which are not distinguished by such a characteristic form that the mark can be considered as a figure mark; nevertheless, registration may not be refused if the mark consists of words which can be considered as a specially invented name for certain kinds of goods stated in the application in accordance with Art. 3, which is not intended to indicate the origin, nature, object, quantity or price of the article.

2. If any other name or firm than that of the applicant, or the name of real estate of another, have been included therein without authority.

3. If it contain public coat of arms or stamps.

4. If it contain representation that may cause offense.

5. If it be altogether identical with a trade mark already registered, or duly presented for registration, on behalf of another, or present such resemblance to a similar mark that, notwithstanding differences in certain parts, the marks in their entirety can easily be confounded; nevertheless, registration may not be refused if the resemblance be owing to such characteristics as are concerned under Art. 7, or if both the marks concern different kinds of goods. (Article 4.)



*Mode of Application.*

An application for the registration of a trade mark, and all other written documents that are filed in cases concerning such registrations, shall be indited in the Swedish language, or, if they are drawn up in another language, they shall be accompanied by a translation into Swedish attested by a Notary Public.

If the documents are sent by post, they shall be addressed to Kungl. Patent- och Registreringsverket, Stockholm.

The application for registration shall be accompanied by a certificate that the applicant has fulfilled the conditions required for the protection of the trade mark in the foreign state.

An application for the registration of a trade mark shall fully and clearly contain in the following order:

1. The applicant's full christian name and surname or firm, profession and postal address.

2. A description of the mark which should only contain what is absolutely necessary for characterizing the mark.

3. If the applicant claim the right to the mark only for certain goods, a statement of the kinds of the said goods.

4. If the applicant claim the right to the mark or to part thereof as comprising a specially invented name for certain kinds of goods, a definite statement concerning the same, stating also the kinds of goods to which the name relates.

5. A list of all enclosures accompanying the application, and signature of the applicant.

If registration for several trade marks be desired, separate applications shall be lodged for each mark.

The trade mark shall not be protected to a greater extent or for a longer period than in the foreign state.

Should the registration not meet with any objection, the mark shall be entered in the register and advertisement thereof inserted without delay in the public newspapers and in a registration journal published at the expense of the public.

*Renewal.*

The protection for a registered trade mark ceases when application for renewal has not been made, for the first time, within ten years from the day of registration, and subsequently within ten years from the last renewal.

If any one be desirous of renewing the registration, he shall deposit or send in as prescribed in Art. 3, a written application in this respect enclosing one copy of such illustration as is there prescribed, together with a registration fee of 10 Kroner. Should the mark have been registered for another than the one applying for renewal, the right of the applicant to the mark shall also be confirmed.

The renewal shall immediately be entered in the register and

a certificate thereof delivered to the applicant in a manner similar to that prescribed in Art. 3 concerning notices of receipt mentioned therein. (Art. 9.)

(The registering authority shall without delay hand the applicant, or, if full address has been given, send by post, a written notice of the receipt of the application and of the day and time of day when the same was received; one of the copies of the trade mark deposited shall be attached to the said notice. Art. 3.)

If the registering authority find that anything of what has here been prescribed has been neglected the said authority shall refuse the renewal. With reference to the communication of the decision and the appeal relating to the same, what is prescribed for the corresponding case in Art. 5 shall here be applicable.

(If the registration be refused, information with regard to such decision, together with the grounds therefor, shall be communicated to the applicant in writing in the manner prescribed in Art. 3 for the cases considered therein. In the event of the applicant being dissatisfied with the decision he may appeal to the King before twelve o'clock, noon, on the sixtieth day after the day of the decision, otherwise he forfeits his right to appeal. Art. 5.)

#### *Assignment.*

The right to a registered trade mark may not be transferred otherwise than together with the business for which it is used.

Should a business be transferred to another owner, the right to a registered trade mark used for the business passes over from the transferrer to the new owner, when agreement is not made that the right to the mark may be retained by the former, or that both may use the mark for different kinds of goods. (Article 8.)

#### *Fines.*

Whoever on goods which are kept for sale or on vessels or wrappers containing the same places without authority the name or firm of another or the name of real estate of another or a trade mark which he knows to be registered on behalf of another, as also whoever keeps goods for sale, which to his knowledge are, according to what is stated above, unlawfully marked, shall be liable to a fine of from twenty to two thousand kroner inclusively, or, if a grave detriment has resulted from the act, or if the act be made under specially aggravating circumstances, to imprison-

ment from one month to two years inclusively, as well as to the payment of all damages.

At the expense of the one condemned the marks unlawfully placed shall be expunged, or, if the expunction cannot otherwise be effected, the goods or the vessels or the wrappers containing the same shall be destroyed, providing they are still in the possession, or in any other way at the disposal, of the one condemned.

Violation of this article may not be prosecuted by the public prosecutor unless the offense be brought before the Court by the injured party.

*Law in Force in Sweden to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

There are no laws or regulations in force prohibiting the importation of goods bearing a false indication of foreign origin; but the customs authorities have power to seize and confiscate imported goods bearing a false indication of Swedish origin. Foreigners may register and protect their trade marks in Sweden if their State has entered into a special agreement with Sweden on the subject. An action for the infringement of a trade mark can only be taken by the injured party. There are no requirements as to the marking of imported goods to denote the place or country of origin, except that imported goods bearing indications suggesting Swedish origin must, to escape seizure by the customs, also bear a clear indication that they are of foreign production.

Marking Goods: "Varumärke" or "Registrerad Varumärke."

*Marks of Origin.*

A commission appointed to revise the Swedish law with respect to false marks of origin has submitted a project of law for that purpose. This project defines a false mark of origin as a mark which, applied to an article, would lead to the belief that it was manufactured in Sweden, when in fact it was imported from abroad. Mere inscriptions in the Swedish language, or designs of Swedish origin, shall not prevent the importation of goods so marked, provided they are accompanied with proper explanatory texts. Goods bearing false marks of origin are to be seized by the customs agents and held until the objectionable marks have been taken off, or their effect annulled by the addition of an easily read indication of foreign origin. The importer may be subject likewise to a fine.

When treaties of reciprocity have been made with any other country, imported goods so marked as falsely to indicate that country as the source of the goods, unless accompanied with an exact statement of the country where the goods are made, shall be subject to the provisions heretofore cited. (La Propriété Industrielle, 1912, p. 20.)

## SWITZERLAND

Switzerland is a Republic and entirely an inland country. The area is 15,992 square miles. The population is estimated at 3,742,000.

Of the various branches of agriculture the cheese industry has undoubtedly the greatest importance for Switzerland, as on it depends the prosperity of the milk industry, the rearing of milk cows and the value of pasture land.

Foremost among the industries is the textile industry, cotton, embroidery, silk, watch making, machinery, woolen, etc. The textile industries have their chief centers in Zurich, Basle, Glarus and St. Gallen.

Next to the textile industry, that of watch making is the most important in Switzerland. Among the metal industries the manufacture of machinery ranks next in importance to watch making, having its chief centers in Zurich and Winterthur.

The salt mines of Switzerland are of considerable importance.

MONEY—The franc=100 centimes=9½ d.=19 cents U. S.

WEIGHTS AND MEASURES—The metric system.

*Law.*

Law, 28th of September, 1890.

*Duration.*

The duration of rights established by registering a mark is fixed at twenty years; but the party holding the right can, by renewing the deposit in the course of the last year, assure himself of the continuation of these rights for a new period of twenty years, and so on indefinitely. The fee for registering each mark, as well as each renewal, is fixed at twenty francs. (Art. 8.)

Rights shall lapse in case the possessor fails to make use of his mark within three consecutive years. (Art. 10.)

*Who May Register.*

The following are authorized to register marks:

1. Manufacturers having the seat of their manufacture or production in Switzerland, and merchants having a commercial house regularly established within the same.

2. Manufacturers or merchants established in States that allow citizens of Switzerland reciprocity of treatment, provided these manufacturers or merchants furnish proof that their marks or firm-names are sufficiently protected in their home country. (Art. 7.)

*What May Be Registered.*

The following are considered as marks of manufacture and trade:

1. Firm names.
2. The symbols placed upon manufactured products of merchandise, industrial or agricultural, or upon their coverings in order to distinguish them or to establish their origin. (Art. 1.)

The Swiss firm names, used as marks, are protected on condition that the formalities prescribed for the recognition of these names are fulfilled. (Art. 2.)

*Requirements.*

Certified copy of home registration; power of attorney (no legalization required); five copies of mark and one wood-cut or electrotype; declaration or the like, verifying applicant's business, must be produced.

*Mode of Application.*

Every person wishing to effect or renew the registration of a trade mark should for that purpose address a declaration to the Federal Bureau for Trade Marks at Berne. The declaration must state the name, address and profession of the applicant, and the following exhibits should also be appended thereto:

The mark or the exact copy of the same in duplicate, with a designation of the articles of manufacture or merchandise for which the mark is intended, incidental observations, signature, address and name of profession of the applicant, an electrotype and a fee of twenty francs. (Art. 11.)

In case the Federal Bureau decides that the mark is not new in its essential characteristics it will send a preliminary notice to the applicant for him to maintain, modify, or abandon his application. (Art. 12.)

The trade mark will be refused if it comprises as essential parts a public heraldic device or any other figure which is to be considered public property, or when the mark contains indications contrary to good morals.

*Publication.*

The mark registered is published within the fourteen days following the registry by the bureau and without expense to the applicant in the official trade bulletin or some other official Federal bulletin designated for that purpose. (Art. 15.)

*Assignments.*

The mark can only be transferred with the enterprise whose products or merchandise it serves to distinguish. The transfer

is of no effect in regard to third parties till after the registration and publication of the act confirming the same.

*Infringements and Penal Provisions.*

The following will be prosecuted in civil and penal suits in conformity with provisions hereinafter set forth:

(a) Those who counterfeit another's mark or imitate marks of others so as to deceive the public.

(b) Those who usurp the marks of others, for their own articles of manufacture or merchandise.

(c) Those who sell, place on sale or in circulation articles of manufacture or merchandise accompanied by a mark which they know to be counterfeited, or imitated, or unduly applied.

(d) Those who knowingly co-operated in infringing or who have been knowingly accessory to infringements.

(e) Those who refuse to declare the origin of articles of manufacture or merchandise in their possession bearing marks counterfeited, imitated, or unduly applied. (Art. 24.)

The infractions mentioned above are punished by a fine of 30 to 200 francs, or imprisonment of from three days to one year, or both.

The punishment may be doubled in case of repetition of the offense.

These penalties are not applicable when there has been simply a mistake, imprudence, or negligence; still the civil damage suits can be instituted. (Art. 25.)

Those who shall have unduly inscribed, upon their marks or commercial papers, any mention tending to make believe that their mark has been registered.

Those who unduly make use of indications of origin or mention of industrial rewards upon sign boards, advertisements, circulars, bills, letters or commercial papers, or who omit the indications prescribed under Art. 22, will be punished, officially or on complaint of the party injured, by a fine of 30 to 500 francs or imprisonment of from three days to one year.

The punishment may be doubled in case of repetition of the offense. (Art. 26.)

The civil or penal action can be instituted:

1. Concerning marks: by the deceived buyer or the owner of the mark.

2. Concerning the origin of marks:

(a) By every manufacturer, producer or merchant injured in his interests and established in the city, locality, region or country falsely indicating his mark.

(b) By every buyer deceived by means of a false indication of origin.

3. Concerning industrial rewards: by every manufacturer,

producer or merchant engaged in the industry or trade of similar articles.

Penal procedure can take place either at the domicile of the delinquent or at the place where the offense has been committed. In any case there can be no accumulation of prosecutions for the same offense.

No acts prior to the registry of a mark can be prosecuted civilly or penally.

Action is debarred by limitation when more than two years have elapsed since the last act of counterfeiting. (Art. 28.)

The action instituted against the applicant of a mark not having his domicile in Switzerland, may be brought before the tribunal, in which the seat of the Federal office is located, if the applicant has chosen his domicile in Switzerland and notified the office thereof. (Art. 30.)

The tribunal shall ordain the necessary protective measures, especially the seizure of the instruments and tools serving to counterfeit; also of the articles of product and merchandise on which the mark at issue is found. (Art. 31.)

The fines are deposited in the cantonal treasury.

Fines not paid are converted into imprisonment at the rate of one day for 5 francs. (Art. 33.)

The following will be prosecuted in civil or penal suits in conformity with provisions hereinafter set forth:

(a) Those who counterfeit another's mark.

(b) Those who imitate marks of others so as to deceive the public.

(c) Those who usurp the marks of others, or the wrappings or envelopes bearing the marks of others, for their own articles of manufacture or merchandise in a manner to make the public believe that they proceed from the house whose mark they unduly bear.

(d) Those who sell, place on sale or in circulation articles of manufacture or merchandise accompanied by a mark which they know to be counterfeited, or imitated, or unduly applied.

(e) Those who have knowingly co-operated in infringing, or who have been knowingly accessory to infringement. (Art. 24.)

#### *Red Cross Law of April 14, 1910.*

Outside of the sanitary service of the army, the following only are authorized to use the emblem of the Red Cross on a white ground, and the words "Red Cross" or "Geneva Cross," as the name or for the designation of their service:

1. The International Committee of the Red Cross at Geneva.
2. The Swiss Central Society of the Red Cross, and the societies and establishments recognized by the Federal Council as auxiliary members of the Central Society of the Red Cross.

The societies and establishments subsidized by the Confederation as members of the auxiliary sanitary service in the army, or of the service of instruction of nurses, but which are not recognized as being auxiliary members of the Swiss Central Society of the Red Cross, have the right to use the emblem and the name of the Red Cross only if they have been in possession of it and have made use of it before the entry of the present law into force. (Art. 1.)

Whoever, without having the right to the use of the emblem of the Red Cross on a white ground or the words "Red Cross" or "Geneva Cross," applies this emblem or these words, or analogous emblems or words capable of giving rise to confusion, on articles of merchandise or the packing thereof, or sells, places on sale or in circulation articles of merchandise thus marked, or unduly employs this emblem or these words in any other manner, shall be punished by a fine not to exceed 500 francs or by imprisonment not to exceed one month, or by a fine and imprisonment within these limits.

These penalties may be increased not to exceed double in case of a second offense, if three years have not elapsed since the last sentence given with the force of chose jugée, for infraction of this law. (Art. 2.)

The general provisions of the first part of the Federal Penal Code of Feb. 4, 1853, applies by analogy to infractions provided for by the present law.

The criminal prosecution and the sentence for infractions of this law are under the jurisdictions of the cantons. (Art. 3.)

The competent authority shall order the seizure of the products and packages marked contrary to the provisions of this law.

Even in the case of acquittal, the court shall order the destruction of the illegal marks.

When the marks have been destroyed, the products seized shall be restored to their owner upon payment of the expense of destruction and the costs charged against him and the fine. (Art. 4.)

Commercial names and names of associations the use of which is forbidden in the sense of Articles 1 and 2, are not inscribed on the commercial register.

Likewise the registration and the deposit of trade marks contrary to the present law, shall be refused. When the registration of such mark is permitted through error, the Federal Department charged with the supervision of the registration may order the cancellation of the mark. (Art. 5.)

Members of the military force who in time of war unduly employ the emblem of the Red Cross on a white ground and the words "Red Cross" or "Geneva Cross," shall be punished by imprisonment not to exceed six months. In cases of little gravity



the guilty party shall only be punished in a disciplinary manner. The same shall also hold good for infractions committed by the military in times of peace. (Art. 6.)

Civilians who in time of war unduly employ the flag or armlet of the Red Cross shall be punished by imprisonment not to exceed six months. (Art. 7.)

Infractions of Art. 6 which are not punished in a disciplinary manner, and infractions of Art. 7, shall be tried by the military tribunals. In this case the provisions of the first part of the Federal Penal Code for the troops of Aug. 27, 1851, shall be applicable by analogy. (Art. 8.)

The present law went into force January 1, 1911.

Names of associations or establishments and commercial names acquired before January 1, 1911, and contrary to the present law, shall be changed before October 1, 1912.

From this time on the authorities in charge of the commercial register shall cause the modification, or the cancellation of commercial names contrary to the provisions of this law.

The registration of a trade mark contrary to the present law shall be considered lapsed from October 1, 1912. (Art. 9.)

In accordance with the provisions of the law of June 17, 1874, relative to the popular vote on Federal laws and decrees the Federal Council is instructed to publish the present law and to set a date upon which it shall enter into force. (Art. 10.) (La Propriété Industrielle, Oct. 31, 1910.)

### *Unfair Competition.*

The Federal Court of Switzerland, under date of October, 1904, rendered a decision which involved two interesting and somewhat unusual questions of trade mark law. Messrs. Perrin Bros. & Co., glove makers, sought to restrain the use by one Vaurillon, a glove merchant of Geneva, of the phrase "A la Chevrette," that is to say "At the Sign of the Stag" upon his signs and stationery. This phrase the complainant used as its trade mark and the question raised was whether its use by the defendant upon signs and stationery alone, and not upon the goods, constituted infringement of the trade mark. The court said that this was not infringement, which could be predicated only upon the wrongful use of another's mark or the imitation thereof upon merchandise or upon the labels or packages containing the same, but that such use of the mark upon signs, stationery and in advertising did, nevertheless, constitute unfair competition.

Secondly, it was argued that inasmuch as Perrin Bros. & Co. had no branch establishment in Geneva, the use of the phrase by the defendant in that city could not interfere with their trade and could not, therefore, afford them the right to any relief.

Upon this point, however, the court said that the plaintiff, if entitled to relief, was entitled to relief everywhere in Switzerland. Moreover, it did not appear that the use by the defendant was confined to Geneva, since they sent their advertising matter out to their foreign clientele, and took orders in cities where the plaintiff, in fact, had branch stores, orders being often transmitted to the defendant by mail, bearing as an address the words "A la Chevrette," sometimes even entirely without the defendant's name. (Perrin Freres vs. Vaurillon, La Propriété Ind., 1905, p. 186.)

The question of how far the restrictions of territory within which a business is conducted limit its right to protection, is therefore rather suggested than decided by the court. The question is novel and as yet undecided in this country. There is no doubt, however, that in a proper case, the fact being shown that the patronage of a business is necessarily local, as for example, that of a restaurant or hotel, the right to restrain imitation, however palpable, in a distant locality would be denied.

*Law in Force in Switzerland to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

The Swiss government have made no special provisions for carrying out the Convention of Paris for the protection of industrial property (1883), as modified by the Additional Act of Brussels of 1900, or for the execution of the Agreement of Madrid of April 14, 1891, with regard to the prevention of false indications of origin. The Federal Law of Sept. 26, 1890, relating to the protection of trade marks and marks showing the origin of goods, forbids the assignment to a product of a false indication of origin; but the courts have never decided whether this law applies to false indications of origin generally and, in particular, to cases provided for in Art. 10 of the Paris Convention and in Art. 1 of the Arrangement of Madrid of 1891 for the prevention of false indications of origin, or merely to such as involve infringement of registered trade marks. The sale, offering for sale, or putting into circulation of goods bearing falsified or imitated registered trade marks is prohibited by the law. Civil or criminal action may be brought for offenses against the Trade Marks Law by the owner of the trade mark infringed or by the defrauded purchaser of falsely marked goods. No special steps are taken to prevent the importation of goods bearing a false indication of origin. Imported matches must be marked with the name of the manufacturer's firm or his registered trade mark. Ordinance dated January 29, 1909, enact that—

1. Certain foreign food products can only be imported into or sold or offered for sale in Switzerland if they bear an indication of the country of origin;

2. Certain other foreign food products can only be imported if accompanied by certificates of origin.

Otherwise, there are no requirements as to the marking of imported goods to show the country or place of origin, or to denote that they are foreign.

Marking Goods: "Schutzmarke" or "Marque déposée."

#### *Rights of Priority.*

Of the few countries where the rights of the first user of a mark are recognized, whether such first use shall have been made in that or in a foreign country, the Republic of Switzerland appears to be one. According to the Swiss laws the right to the use of a trade mark is vested in the party first employing it. The question of whether this meant the first to employ it in Switzerland, or the first to employ it anywhere, whether in Switzerland or outside, was decided by the Swiss Federal Tribunal under date of December 8, 1900. The suit was one brought by an Austrian house against a Swiss house, for infringement of the former's trade mark in Switzerland. It appeared that the mark had been originally used by the Austrian house at home, before it had been used by the Swiss house, but had been used by the Swiss house in Switzerland before it had been there used by the Austrian house. The court held that priority of use sufficient to sustain the action was established upon this state of facts in behalf of the complainant. That priority of use in any country with which Switzerland had concluded a treaty for the reciprocal protection of trade marks accorded the same rights to the first user in that country as would arise from priority of use in Switzerland, and that, in the case before it, the rights of the Austrian house were superior, even though it had not, as a matter of fact, made any use whatever of the trade mark in Switzerland.

#### *Trade Marks and Trade Names.*

The report of a case of infringement of a trade mark in a Swiss court shows that the doctrine applied there does not differ greatly from that in force in the United States. The plaintiffs, makers of champagne, used two marks upon wines of their production, the one upon the corks, consisting essentially of the firm name Moët & Chandon, the other a label consisting of a figurative design, and including the name of the same firm, the predecessors in business of the plaintiff's. Each of these marks was registered in Switzerland in 1897. The defendant was making use upon his bottles and corks of labels like in color, in many details, and in general appearance to those of the plaintiffs, and evidently copied from them, with the intent to deceive the purchasing public. The word "Monette" was used upon the de-

defendant's label and corks, and the arrangement of the words on the latter's labels was very similar to that shown on the plaintiff's. The court said that deception was more likely, because the plaintiff's champagne was usually called for short "Moet." In the application of that section of the trade mark law which provided that he should be liable who usurped the mark of another for his own goods, an injunction was granted against the use by defendant of the word "Monette" upon labels or corks, damages were awarded and it was ordered that the infringing labels be confiscated and the offending marks removed from the defendant's corks in stock. (Chandon & Co. v. Champagnerkellerei, A. G. in Biel, *Zeitschrift für Schweizerisches Recht*, 1909, p. 100.)

Another suit decided by the Court of Civil Justice of Geneva concerned the right of a successor in business to make use of the family name of his predecessor. One Gay conducted a brewery at Geneva under the name B. Ackermann, having purchased the business from a previous owner of that name and having acquired from him the right to use the name. After he had continued the use of this name for several years, certain members of the Ackermann's family undertook to enjoin the use of the name, not upon the ground of unfair competition, since they were not engaged in any similar business, but on the general ground that the right to the use of the family name by another under such circumstances, was unauthorized. The court, however, said that it was not in keeping with the customs of business to allow a house to get a reputation under a certain name and with the consent of the first proprietor, and then, after many years, to take the name away without due cause and deprive the house of the good will that attached thereto. It was held that there was no wrong done by Gay, and no damage, material or moral, suffered by the plaintiffs. (Ackermann vs. Gay, *Zeitschrift für Schweizerisches Recht*, 1909, p. 116.)

#### *Trade Names in Switzerland.*

The Civil Court of Geneva has held that the owner of a hotel has a proprietary right in its name, and may prosecute for the use of a similar name upon a rival establishment. The first user of a sign or trade name acquires the right under the Swiss Code to prevent the use of the same or a similar name by another. Moreover, this right of action arises from the fact of the use by another of a name or sign calculated to cause confusion, irrespective of any proof of such confusion, or of fraudulent intent on the part of the defendant. The name, "Pension des Bergues" is likely to be confused with the name "Hotel des Bergues" and the relatively small importance of the former establishment is no defense to its proprietor.

(Société des Bergues vs. Kammer, Annales de la Prop. Ind., 1908, p. 99.)

*Trade Mark Infringement.*

The manufacturer of certain chemical products known as "Pastilles Valda" and the name of which was registered as a trade mark, brought suit to restrain another manufacturer of similar pastilles of the same color and size, which he advertised as "Pastilles Alpha, Valda Style." It was shown that the defendant filled orders for "Pastilles Valda" with his own product, although he billed them as "Pastilles Alpha" and it was further shown that retail druggists had sold the defendant's product as and for the plaintiff's. The court of first instance held that the use of the term "Valda Style" was not calculated to confuse any purchaser, and for the acts of retailers who substituted the one article for the other, the defendant could not be held responsible.

An appeal was taken to the Federal Court, which dismissed the appeal. The higher court said that the right could not be denied to a merchant to make use of a word employed as a mark by a rival, if he preceded it in use with the word "style," "imitation" or "kind." While this right is not recognized in France, it is recognized both in the Swiss and in the German law. If these words are conspicuously shown, so that the reader immediately sees that the product offered is not that for which the mark is registered, but is one in imitation thereof, such a course of competition cannot be considered improper. As for the acts of the retailers in passing off the defendant's goods in place of the plaintiff's, the court said that whatever confusion might have been occasioned in this way, the defendant was not responsible therefor, inasmuch as he had done what the law required to distinguish his goods from those of the plaintiff:

(Canonne vs. Rossier, La Propriété Industrielle, 1912, p. 39.)

*Liability for Infringement.*

The Swiss Federal Supreme Court in September, 1909, gave a decision in the case of the Havana Commercial Company of New York, against a number of retailers in the City of Geneva. The subject of litigation was the wrongful use of the company's mark "Villar y Villar," for cigars. Action having been instituted against a number of retailers the manufacturers of the goods alleged to infringe intervened in the suit, for the defense of their rights, and claimed that the mark had fallen into the public domain. The Federal Court held that the force of Article 6 of the International Convention, imposing upon any State adhering thereto the duty to register and protect a mark registered in the country of origin, was limited in its effect to the form of the mark, and the characters which constitute it. That,

on the other hand, the national law still regulated all questions of substance. The Federal Court held that the mark had not fallen into the public domain. In order to obtain such a result, it would be necessary that it become a generic designation of the product upon which it is used, or that the infringement be expressly or tacitly authorized by the legitimate owner of the mark.

As to the retailers, the Court said that they could not avail themselves of the claim that they had acted in good faith, for the absence of fraudulent intent did not, under the Swiss law, relieve of the civil responsibility for wrongs. The retailers should examine into the source of the merchandise which they purchase and the propriety of the marks, and if they do not, they became responsible for any injury resulting from the use. The Federal Court consequently affirmed the decree of that at Geneva, which had condemned each retailer to a fine of one hundred francs and expenses, and forbidden them to make any further sales of the counterfeit products.

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## TRANSVAAL

Transvaal is situated in South Africa, lying north and east of the Cape Colony and between the Orange River Colony and the Limpopo or Crocodile River. The area is about 112,000 English square miles. The population is estimated at about 1,272,000. No part of the territory touches the sea. The nearest ports are Delagoa Bay and Durban, Natal. Gold mining is the chief industry of the country. The climate is also favorable for the breeding of cattle and sheep.

In addition to gold, the country is rich in minerals, coal existing in large quantities, also silver, copper, iron, lead, tin, galena, cobalt, diamonds, etc.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

### *Law.*

Provision is made for the registration of Trade Marks in the Transvaal Colony by Proclamation No. 23 of 1902.

### *Duration.*

The effect of registration is to secure protection in perpetuity, as no provision is made for the payment of renewal fees.

### *What May be Registered.*

The definition of a Trade Mark or the essential particulars which a Trade Mark must contain in order to secure registra-

tion is similar to the requirements of the English Trade Mark Law and English decisions and practice are generally followed.

*Mode of Application and Documents Required.*

In order to obtain registration of a trade mark an application must be filed with the Registrar of Trade Marks at Pretoria, and must be written on foolscap paper and shall have on the left hand side a margin of not less than one and a half inches.

An application for registration of a trade mark, if made by any firm or partnership, may be signed by some one or more members of such firm or partnership, as the case may be.

If the application be made by a body corporate it may be signed by the Secretary or other principal officer of such body corporate.

The documents required are: Form of application, power of attorney, six representations of the Mark and one block or electrotype of the Mark.

Power of attorney must be executed by the applicant in the presence of and be attested by two witnesses.

Every application for registration of a trade mark shall contain a representation of the Mark affixed to the back of the Application Form.

Where the representation is larger than the back of the application, the representation shall be mounted on linen, tracing cloth, or other material that the Registrar may consider suitable. Part of the mounting shall be affixed to the back and the rest may be folded over.

The six additional representations of each Mark accompanying the application must correspond exactly with that affixed to the back of the application in Form and noted with all such particulars as may from time to time be required by the Registrar. Such particulars shall, if required, be signed by the Applicant or his Attorney or Patent Agent.

All representations of Marks must be of a durable nature; the additional representations shall be affixed to half sheets of strong foolscap and noted as aforesaid.

When an applicant for the registration of a trade mark is out of the Colony at the time of making the application he shall give the Registrar an address for service in this Colony, and if he fails to do so the application shall not be proceeded with until the address has been given.

*Assignments.*

The right to the use of a trade mark is assignable in writing, and the following provisions are made in the rules in respect of assignments.

Where a person becomes entitled to a registered trade mark by assignment, or otherwise, a request for the entry of his name in the register as proprietor of the trade mark shall be addressed to the Registrar and left at the Patent Office, Trade Marks Branch.

Such request shall, in the case of an individual, be made and signed by the person requiring to be registered as proprietor, and in the case of a firm or partnership by some one or more members of such firm or partnership, or in either case by his or their agent respectively duly authorized to the satisfaction of the Registrar, and in the case of a body corporate by their agent, authorized in like manner.

Every such request shall state the name, address and description of the person claiming to be entitled to the trade mark (hereinafter called the claimant) and the particulars of assignment, transmission or other operation of law, by virtue of which he requires to be entered in the register as proprietor so as to show the manner in which, and the person or persons to whom the trade mark has been assigned or transmitted, and so as to show further that it has been so assigned or transmitted in connection with the good will of the business concerned in the particular goods or classes of goods for which the trade mark has been registered.

Every such request shall be accompanied by an affidavit to be thereunder written, verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the trade mark as claimed by such request.

#### *Classification.*

The classification of goods is similar to that in the English trade mark law.

#### *Practice.*

A trade mark must be registered as belonging to particular goods or description of goods, and when registered shall be transferred and transmitted only in connection with the good will of the business concerned in such particular goods or description of goods, and shall be determinable with such good will, but subject as aforesaid application for registration of a trade mark shall be deemed to be equivalent to public use of such Mark.

A trade mark may be registered in any color or colors and such registration shall, subject to the provisions of this Proclamation, confer on the registered owner the exclusive right to use the same in that or any other color or colors.

The period required to effect registration of a trade mark and obtain a certificate is about two months from the date of the filing of the papers.



Where registration of a trade mark has not been issued or not been completed within twelve months from the date of the application by reason of default on the part of the applicant, the application shall be deemed to be abandoned.

The Registrar of Deeds has power to grant an enlargement of time.

An appeal against the Registrar's decision may be made to the Supreme Court.

#### *Trade Marks in the Transvaal.*

Two decisions of the Registrar of trade marks of the Transvaal, upon oppositions filed to applications for registrations, are of interest. The first of these decisions had to do with an application for the registration of a trade mark for cigars, consisting of a label, the important feature of which was the words "El Troco." Cigars under this mark had been imported by the applicant from Germany for fifteen years and until lately had been sold by the applicant under the manufacturer's original label, without any additional mark of his own. Afterwards, having altered the label by substituting his own portrait for the portrait that appeared thereon, he applied for registration of the label as altered. The Registrar said that the variation was not material. For purposes of registration the two labels were practically the same. The question, therefore, was as to the right of the applicant to register the label of the manufacturer, under which he had been importing cigars for fifteen years past.

The opponents had been for a lesser period importing other "El Troco" cigars from Germany, purchasing them from a manufacturer other than the one from whom the applicant purchased, but under the same label. It appeared that the second manufacturer required the right to use the label from the original designer thereof, and the opponents contended that the words "El Troco" were common to the trade and the applicant could not claim an exclusive right, in respect to these words. Consequently, the words were not registrable as his trade mark. The applicant, on the other hand, contended that he was the first to introduce the "El Troco" cigars in the colony, that he created a market for them and was entitled to the registration of the words.

The Registrar said that the opponent had not, in his opinion, discharged the burden of proof upon them, in their efforts to show that the mark is common to the trade. As to Germany, there was no evidence that the cigars were sold under this mark, by any except the two firms from whom the respective parties obtained their goods; and, therefore, it could hardly be said that the words were common to the trade in that country. No evidence was produced to show that the mark was common to the trade in any other part of Europe and no evidence to indicate that the mark is common to the trade in the Transvaal. On the

contrary, both parties to this proceeding appeared to be of the opinion that they are the only two persons who were using the words as a trade mark in the Transvaal.

The contract with his manufacturer, under which the applicant claimed the exclusive right to the use of the label in that colony, was part of the evidence in the case, and the registrar considered it clear, from the terms of the document, that the right to use the label is conditional; that the manufacturer had not sanctioned its registration, either in his own name or that of the applicant; that of the applicant, moreover, is not the proprietor of the label he proposes to register, except in so far as relates to his own portrait. He, being merely an importer, is not entitled to register to himself the mark of the manufacturer or exporter. Registration of the mark, was, therefore, refused. (*Fine Bros. Ltd., vs. Berthold*, March 3, 1908.)

In the second case, an application was made to register a trade mark, consisting of the words, "Bull's Head" and the device of a bull's head. The application was opposed by the Royal Antediluvian Order of Buffaloes, an order which had been established in the Transvaal for about twenty years and numbered ten thousand members. It appears that the head of the South African buffalo is regarded as the symbol of the society in the Transvaal. It was argued in behalf of the opponents that the mark applied for was identical with the emblem of the society and that its use is liable to lead to the belief that the applicant's business is carried on under the auspices of the society.

While the registrar said that the two devices are for all practical purposes identical, still, it did not appear that the use of the mark by the applicant was likely to result in any injury or loss to the opponent. The opponent society, it was admitted, does not carry on any trade and does not give its patronage to any trader or person. Its sole ground of objection is, that the society is averse to having any trader represent himself as trading under its patronage. It was argued that some members would be misled by the use of the mark, to the detriment of other traders. While it was conceivable, the Registrar said, that the members of the order, seeing the device, which might easily be mistaken for that of a buffalo's head, might purchase goods from the applicant, there was no evidence that the society, or any person, would suffer any injury or loss, from the registration of the mark. The objection seems to be based upon sentimental grounds only, and the facts disclosed will not justify a refusal of registration. (*Royal Antediluvian Order of Buffaloes vs. Smith*, December 20, 1910.)

#### *Similarity of Goods.*

In January, 1909, the device of an anchor, crossed by the letter "H" and used with the word "Anchor," was adopted as a

trade mark for bituminous paint, and in June of that year the trade mark was registered for these goods. In the following year, application was filed by another firm, to register a trade mark for ordinary oil paints, consisting of the device of an anchor with a length of cable attached, which mark had been extensively used in the Transvaal since the year 1906. The Registrar refused to proceed with the registration, without the special direction of the court. Recourse, was, therefore, had to the court for an order directing him to proceed and the petition was supported by affidavits, showing the differences in the nature and uses of the goods to which the marks were respectively applied and showing that the marks had in fact been used side by side without confusion. Moreover, the consent of the first registrant to the registration of the second mark was offered. The Registrar maintained before the court that bituminous paint and oil paints were goods of the same description, within the meaning of the Trade Mark Act, that as both lines of goods would be known as the "Anchor" brand, confusion was likely to result; and that the consent of the registered owner of the first mark was not conclusive against such possibility of confusion. The court recognized the differences between the goods and, regarding confusion as improbable, ordered the registration of the mark for which application was made. The court considered the same test formulated by the court of appeals of the District of Columbia in recent decisions, to-wit, whether or not a person seeking to buy the one article might be led, in view of the similarity of the marks, to accept the other in its place. By this test, it was held to be clear that there is no probability of confusion, since no one wishing to buy oil paint would accept bituminous paint in its place, or vice versa. If, indeed, a customer familiar with one of the articles were led by the similarity of the marks to try the other article, under the belief that it came from the same manufacturer, he would none the less be obtaining what he wanted, to-wit, oil paint or bituminous paint, as the case might be, and the only person who could possibly be injured would be the trader whose reputation brought about the second sale. If he makes no objection, there remains no other interest to be considered. (In re Wilkinson Heywood & Clark, Ltd., June 19, 1911.)

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## TRINIDAD AND TOBAGO

These islands are situated near the northern coast of Venezuela. The southern coast of Trinidad being distant only about 15 miles from the mainland, nearly opposite the mouth of the Orinoco, Tobago being distant about 20 miles to the northeast of Trinidad. The area of Trinidad is about 1,754 square miles,

and Tobago about 120 square miles. The latter island was formerly included in the Windward Group of islands, but by an order in Council of 20th of October, 1898, Tobago was made a ward of Trinidad as from the first of January, 1899. The estimated population of the two islands is 344,500.

The principal towns are (Trinidad) Port of Spain and San Fernando, (Tobago) Scarborough and Plymouth.

The government of the Colony is carried on by the Governor, assisted by an Executive Council of six members; there is also a legislative body, consisting of twenty-two members.

An asphalt lake of 90 acres exists in Trinidad about 36 miles from Port of Spain, and contains an apparently inexhaustible supply of valuable material, which is exported to a considerable extent. It was leased to an English company for a term of twenty-one years from January 1, 1888, and the lease has since been extended for a further twenty-one years from 1909.

Coal, manjak and petroleum oil have recently been discovered, and workings in regard to each of them are now in operation.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

#### *Law.*

Ordinance No. 10 of the 12th of March, 1900.

#### *Duration.*

Fourteen years; renewable.

#### *Requirements.*

Power of attorney; eight copies of mark; electrotype or wood-cut.

#### *What May be Registered.*

1. For the purposes of this Ordinance a trade mark must consist of or contain at least one of the following essential particulars: (a) A name of an individual or firm printed, impressed or woven in some particular and distinctive manner; or (b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or (c) A distinctive device, mark, brand, heading, label or ticket; or (d) An invented word or invented words; or (e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

2. There may be added to any one or more of the essential particulars mentioned in this section any letters, words or figures, or combination of letters, words or figures, or any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade

mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

3. Provided as follows: (a) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business; but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof. (b) Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures, used as a trade mark, either in the Colony or elsewhere, before the thirteenth day of August, 1875, may be registered as a trade mark. (Art. 28.)

#### *Opposition to Registration.*

1. Any person may, within three months of the first advertisement of the application, give notice in duplicate to the Registrar of opposition to registration of the trade mark, and the Registrar shall send one copy of such notice to the applicant.

2. Within one month after the receipt of such notice, or such further time as the Registrar may allow, the applicant may send to the Registrar a counter statement in duplicate of the grounds on which he relies for his application, and, if he does not do so, shall be deemed to have abandoned his application. (Art. 33.)

#### *Infringement.*

The infringement of a trade mark may be restrained and damages for such infringement recovered in an action in the Supreme Court, if such trade mark has been registered, or if registration thereof in the register of trade marks has been refused, but in no other case. The Registrar may on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused. (Art. 40.)

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## TUNIS

The territory of Tunis covers about 51,000 square miles, with a population estimated according to the latest computation at 1,900,000.

There are several good ports of recent construction; Tunis (by Canal), Bizerta (by Canal) Susa and Sfax; at all of which, vessels can draw up alongside of quays; also Monastir, Mehdiia (anchorage not good), Djerba, Gabes, Tabarca and Gallippia.

MONEY—The franc=9 1/2d.=19 cents U. S.  
 WEIGHTS AND MEASURES—The metric system

*Law.*

Du 5 Chaoual 1306 (3 Juin 1889).

*Decree.*

Du 4 Rabia Ettani 1310 (25 Octobre 1892).

*Duration.*

The registration has effect for a period of fifteen years. The property in a trade mark may always be preserved for a further term of fifteen years by new registration. (Art. 10.)

*Who May Register.*

Foreigners engaged in industrial and commercial pursuits in Tunis are entitled to adopt a special mark for their products; they will enjoy all the advantages and guarantees afforded by the Regulations.

*Requirements.*

Power of attorney; three copies of the Mark; one electrotype; full name, address and occupation of the applicant, and also a statement of the goods to be covered by the mark.

*Penalties.*

Will be punished by a fine of from 30 francs to 1,800 francs, and by imprisonment from three months to three years, or by one of these penalties only:

1. Those who have counterfeited a trade mark or made use of a counterfeited trade mark.
2. Those who have fraudulently affixed on their products or the articles of their commerce a trade mark belonging to another party.
3. Those who have knowingly sold or offered for sale one or more products bearing trade mark either counterfeited or fraudulently affixed. (Art. 15.)

Will be punished by a fine of from 30 francs to 1,200 francs, and by imprisonment of from one month to one year, or by one of these penalties only:

1. Those who without counterfeiting a trade mark have fraudulently imitated the same so nearly as to deceive a purchaser, or who have made use of a trade mark fraudulently imitated.
2. Those who have made use of a mark bearing indications

of a kind to deceive a purchaser as to the nature of the products.

3. Those who have knowingly sold or offered for sale one or more products bearing a trade mark fraudulently imitated or bearing indications of a kind to deceive a purchaser as to the nature of the products. (Art. 16.)

#### *Jurisdiction.*

Only the jurisdiction of the French Tribunal is competent in all contested cases.

#### *International Registrations in Tunis.*

It is held by the Court of Algiers, first chamber, that where a mark has been registered by one person in Tunis, and by another party with the International Bureau at Berne, which latter registration has been communicated at Tunis under the terms of the International arrangement for the registration of trade marks, the courts of Tunis have jurisdiction to entertain an action for infringement, brought by him who registered his mark directly in Tunis, against the owner of the International registration, because the notice sent from the International Bureau was tantamount to a registration of the mark in Tunis, affording it the same protection as if it had been registered there originally. The question is, therefore, to be determined in the same way as in the case of two conflicting registrations in Tunis. (Fouger vs. Societe Agricola, Annales de la Prop. Ind., October, 1907.)

#### *Unfair Competition.*

The civil court of Tunis has held that it is unfair competition to refill bottles belonging to a rival concern with a beverage of one's own manufacture and to sell the same to dealers for resale to the consumer, under the mark of a rival concern which appears upon the bottles. Such an act is likely to produce confusion to the damage of the latter. The alleged good faith of the trader who does this can not be pleaded in defense, for even if he did not seek to deceive the purchasers he should very readily see the consequences which might result from the use of these bottles bearing a mark not his own and filled with his products. (Annales de la Prop. Ind., 1910, p. 35.)

#### *Law in Force in Tunis to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

It would appear that goods bearing a false indication of origin can be seized on importation or in the interior, or be prohibited from importation by the action of the Customs, of the Public Prosecutor, or of parties liable to be injured, in accordance with

the Arrangement of Madrid (1891) which Tunis has joined. The Laws also afford protection against the fraudulent use of a trade name and the reproduction or imitation of trade marks registered in Tunis. In cases of false indication of origin the Public Prosecutor should prosecute on the complaint of injured parties or of the representatives of foreign governments that have adhered to the Convention of Paris (1883), and the Arrangement of Madrid (1891); injured parties may also join in the public prosecution or sue before Civil Courts. No cost is entailed on complainants if the Public Prosecutor alone undertakes the prosecution. There appear to be no Laws or Regulations as to the marking of imported goods with an indication of the country of origin.

Marking of Goods: "Marque déposée."

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## TURKEY

The area of the Turkish Dominion (including Egypt, Samos, Crete and Tripoli) is about 1,560,000 English square miles, of which about 65,000 are situated in Europe and the rest in Asia and Africa. The population is estimated at 35,178,000. The principal imports are drapery goods, sugar, cereals, pique, files, coffee, etc.

MONEY, WEIGHTS AND MEASURES—Same as Great Britain.

### *Law.*

Regulation May 10, 1888. 29 Shaban, 1305.

### *Term.*

The privileges of a trade mark which has been registered in accordance with the stipulations of Article 3, can only be enjoyed for a term of fifteen years; the right of exclusive ownership of a trade mark can be renewed for another term of fifteen years, provided the formalities in Article 3 are again accomplished. (Art. 4.)

### *Who May Apply.*

Foreigners engaged in industrial or commercial pursuits in Turkey are equally entitled to adopt special marks for the produce of their industrial establishments and articles of commerce, on condition that the stipulations of the present Regulations are strictly complied with; they will then enjoy all the advantages and guarantees afforded by these Regulations. Should any litigation arise on the subject of trade marks, the case will be tried in the Turkish courts in accordance with the provisions of these



Regulations (Article 2), even though contending parties be of foreign nationality. (Art. 6.)

*What May be Registered.*

All names, seals, descriptions, stamps, letters, numbers, special coverings or wrappers, and other distinctive signs used on goods and manufactured articles, for the purpose of distinguishing the locality and place of manufacture, the name of the manufacturer, or of the dealer. (Art. 1.)

The usage or adoption of trade marks for manufactured articles and merchandise is not compulsory; the Government, however, may, when necessary, insist upon the adoption of trade marks for certain products. It is clearly understood that all emblems adopted as trade marks must not be of a seditious character, or at variance with public order and morals. (Art. 2.)

It is necessary here to point out that signs and symbols, such as the Star and Crescent, the Crescent only, or the national arms of any country, are not accepted as trade marks.

The Ministry of Police also refuse to permit the use of such words as Emperor, King, Queen, Prince, Princess in trade marks, and great care must be exercised in avoiding anything having the slightest reference to the Sultan or to Islamism.

*Formalities for the Registration of Trade Marks.*

Any person desiring to register his trade mark must submit and deposit either in person or through an agent duly empowered by power of attorney to act in this special matter, two facsimiles of his trade mark, at the offices of the Ministry of Commerce in Constantinople, or, in the provinces, at the office of the Administrative Council of the district in which he resides.

Should the mark consist of a special stamp or seal, two facsimiles will be necessary. If the distinctive mark be of a different nature, two exact designs of the original, as well as documents duly signed and attested, and giving all the necessary explanations, will be required. In the case of a registration being effected through an agent, the power of attorney must be attached to the copies of the trade mark and to the explanatory documents. (Art. 7.)

The Chief Clerk of the Council shall then fix one of the facsimiles of the mark on a special page of a book kept for the purpose, and will make the following entries:

1. The date on which the mark was submitted.
2. The name of the owner of the trade mark or of his agent.
3. Profession or trade and residence of the owner.
4. The nature of the articles or merchandise for which the trade mark is intended.
5. The consecutive number of registration.

These entries will then be signed and sealed at the Ministry of Commerce, if the registration is effected in Constantinople, but if in the provinces, by the Administrative Council. The proprietor of the trade mark or his agent will also sign.

The second facsimile, or design of trade mark, will be gummed to a sheet of paper, on which the aforementioned entries will be copied in full, and this sheet having been duly signed and sealed by the owner of the trade mark or by his authorized agent, will be forwarded to the Ministry of Justice.

In cases where the trade mark, or the design of the trade mark, has been deposited at the Administrative Council in the provinces, a third specimen will be required for transmission to the Ministry of Commerce. (Art. 8.)

Upon the fulfillment of the formalities enumerated in the foregoing Articles, and on the payment of the fees, a provisional certificate (*Muvakat Ilmuhaberi*), signed by the Ministry of Commerce in Constantinople, or, if in the provinces, by the Administrative Council, will be delivered to the owner of the trade mark. This provisional document will be changed later on for a definite certificate issued by the Ministry of Justice. (Art. 9.)

The facsimile or design of trade mark, with the copy of the registration mentioned in Article 8, shall be forwarded at the earliest opportunity, by the Governor-General of the province to the Ministry of Justice, where these documents are to be registered and kept. The Ministry of Justice will then, within a month after receipt of these documents, forward the official and printed certificate to the Governor-General. (Art. 10.)

#### *Fees.*

A fee of from £ T. 2½ to £ T. 5 is charged for the certificates of registration; these fees are to be paid in Constantinople into the Ministry of Commerce, and in the provinces to the Councils of Administration, who are enjoined to remit all such payments to the Ministry of Commerce. (Art. 5.)

Although the fees for the registration of a trade mark are fixed by Article 5 at from £ T. 2½ to £ T. 5, the maximum fee is invariably charged for the registration of a trade mark consisting of only one sign or symbol.

In cases where a trade mark consists of several distinctive signs, the fee charged for the first sign is £ T. 5, the second £ T. 3, and every following mark is charged at the minimum rate of £ T. 2½ for each mark, although only one certificate is issued for the whole number of marks.

Should, however, a separate certificate of registration be required for each distinctive sign, which together form one trade mark, the maximum fee is charged for each certificate issued.

*Assignments.*

The exclusive ownership of a trade mark can be ceded by the owner to a third person, with the assent of the Imperial Ottoman Government. In case of decease of the owner of a trade mark, the exclusive ownership is likewise inherited by the heirs. (Art. 4.)

The formalities for transferring the right of ownership of a registered trade mark are made at the Ministry of Commerce free of charge.

*Legal Procedure.*

No person can claim an exclusive ownership to a trade mark nor can he prosecute any person imitating such a mark, unless the claimant has previously submitted two facsimiles of the mark he has adopted in Constantinople to the Ministries of Commerce and Justice, and in the provinces to the Administrative Council as well as to the Appeal Court of the district in which he resides, and subject to the terms mentioned in the second chapter of the present Regulations. (Art. 3.)

Civil actions in matters concerning trade marks are brought before the Courts of First Instance of the Empire, and are summarily tried before these Courts.

Should cases be brought before the Criminal Courts, and questions relative to the ownership of a trade mark be raised by the defendant, such questions shall also be tried and decided by the Criminal Court. (Art. 11.)

The owner of the trade mark may obtain, through the Court, a detailed description of the nature, quality, and quantity of merchandise which he asserts bears his trade mark, and which he contends constitute the infringement of the present Regulations. The owner of the trade mark may also, if necessary, obtain an order from the Court for the seizure of such merchandise.

The order will be granted on the petition of the plaintiff, and subject to the presentation to the Court of the certificate (Ilmuhaber) testifying to the registration of the trade mark. The Court will, if it is considered desirable, appoint an expert, whose duty it will be to assist the officers of the Court in effecting the seizure.

In cases where an application is made for the seizure of merchandise, the Court may, if necessary, require the deposit of a security in money by the plaintiff before granting such an order.

Copies of the order of seizure, as well as of the instrument certifying that a security in money has been deposited, must be delivered to the person in whose possession the merchandise seized was found. In case of non-compliance with the aforementioned formality, i. e., if the copies of the said documents have not been

delivered to the defendant, the measures taken shall be considered null and void, and the official culpable of such negligence will be held liable for damages. (Art. 12.)

The distance between the locality where the merchandise was found, noted, and seized, and the residence of the defendant, shall be determined by days—six hours being considered the equivalent of a day. If no legal action is taken within fifteen days, beyond the number of days allowed for distance of residence, the inventory of the merchandise, as well as the seizure, will be considered null and void; this will not, however, affect the right of the plaintiff to bring an action against the defendant for damages. (Art. 13.)

#### *Penalties.*

A fine of from £ T. 1 to £ T. 50, or an imprisonment for a term of from one to six months, or both penalties, according to the gravity of the following offenses:

1. Any person guilty of imitating a trade mark which has been duly registered in conformity with the conditions of the present Regulations, and any persons who may have used a fraudulent trade mark.

2. Persons who have marked their goods with trade marks, the property of others.

3. Persons who knowingly have sold, or have offered to sell one or more kinds of goods, marked with fraudulent trade marks, or bearing marks which have been fraudulently affixed. (Art. 14.)

A fine of from £ T. 2 to £ T. 30, or to an imprisonment of from one week to two months, or to both of these penalties, according to the gravity of the following offenses:

1. Such persons as may have altered a trade mark with intent to defraud, or have made use of such trade mark.

2. Such persons as may have used the trade marks of a special class of goods or articles for some other class of goods or articles, with the intention of defrauding the buyer, as to the quality of the goods or articles.

3. Persons who knowingly have offered such goods for sale. (Art. 15.)

A fine of from £ T. 1 to £ T. 10, or to an imprisonment of from twenty-four hours to a week, or to both penalties, according to the gravity of the following offense:

Such persons as may not have placed on the goods and articles indicated by the Ministry of Commerce, the necessary trade mark as stated in Article 2, as well as those persons who may have sold or caused to be sold goods not bearing the recognized registered trade marks. (Art. 16.)

Should any person be convicted of more than one of the of-

fenses enumerated above, the penalty prescribed for the most serious of these offenses shall be inflicted. (Art. 17.)

In the case of second conviction, the penalty to be imposed must be equal to double the penalty inflicted in the first case. Any person found committing one of these offenses five years after the date of first conviction shall be liable to a second conviction. (Art. 18.)

The Court may order the confiscation of goods bearing trade marks which have not fulfilled the stipulations of Articles 14 and 15, as well as the instruments and tools specially employed in the making of such trade marks, even when the accused party has already been convicted and condemned. The Court may order the delivery of goods bearing a forged trade mark, or marks belonging to others, and which have been confiscated, to the proprietor of the genuine trade mark. The value of such goods may be assessed, and if necessary, be given as part compensation for the damages claimed. In all cases, trade marks recognized as not having complied with the conditions of Articles 14 and 15, shall be destroyed. (Art. 19.)

Persons who shall have sold, or who have caused or offered to sell, goods not bearing the trade marks registered specially for that particular class of goods, will incur the penalty mentioned in Article 15, and will, at the same time, be compelled to affix the authorized trade mark for such goods. In cases of recurrence of such an offense, within five years after the date of the first conviction, the Court may order the confiscation of the goods. (Art. 20.)

A fine of from £ T. 2 to £ T. 50, or, to an imprisonment of from one to six months, or both penalties, according to the gravity of the following offense:

Persons convicted of affixing on goods, either in full, or by any other means, the name of a locality within the Ottoman Empire, other than the real place of origin of such goods, and persons who knowingly may have sold or offered such goods for sale. (Art. 21.)

All cases prosecuted under Article 21 shall be tried in accordance with the terms of the present Regulations respecting legal procedure. (Art. 22.)

Goods discharged into Custom House, and bearing fraudulent marks, as well as the name of a locality or country, will not be refused entry into the Empire. The owners of the genuine trade marks lose none of their rights to prosecute the offenders should their trade marks have been imitated abroad. If, however, foreign imitations of Ottoman products, and bearing fraudulent trade marks, are introduced into the Empire, such goods will be refused entry into the country, and will be returned to the owners.

Unclaimed goods will be allowed to remain, and will be stored

in the Custom House for a period of one year. If, at the expiration of that term, it should be found impossible, owing to deterioration, to keep such goods in store for a second year, the counterfeit trade marks shall first be destroyed, and the goods shall then be sold by auction. The proceeds of the sale of such goods, after deduction has been made of the storage charges, will be held in deposit by the Customs Administration and will be paid to the owner of the goods, should he present his claims before the end of the second year. In default of any such claim being filed within the period stated, the sum in deposit will revert to the Customs Administration.

Goods which have been seized by the Custom's authorities and which have not been claimed by the owner within a year from date of seizure, will be destroyed when it is found impossible to efface the trade mark. (Art. 23.)

The Turkish Government has issued an order to its custom authorities to admit no foreign goods which bear the mark or design of a star. It is supposed that the reason for this is that the representation of a star is a part of the Turkish coat of arms.

*Laws in Force in Turkey to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

There are no laws or regulations in force relating to the importation or sale of goods bearing a false indication of origin.

Marking Goods: "Trade Mark Registered," or "Marque déposée," or in Turkish language.

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## UNITED STATES OF AMERICA

The United States of America occupy the entire width of the central portion of North America. They are bounded north by New Brunswick, Canada (from which they are separated by the River St. Lawrence and the Great Lakes) and British Columbia; on the south by Mexico and the Gulf of Mexico; east by the Atlantic and west by the Pacific Ocean. Including Alaska, the entire area of the United States and territories is 3,756,884 square miles. The total population in 1910 was 91,972,266.

The principal imports are coffee, cocoa, tea, sugar, chemicals, fibers, fur skins, hides and skins, fruit, raw and manufactured silk, India rubber, iron and steel goods, oils, tobacco, wines, wool and woolen goods, cotton goods, cotton for manufacturing, tin, jewelry, etc.

The progress of the cotton plant in the Southern States of

America is interesting. The general impoverishment of the south at the termination of the war tended to such improvements in the cultivation of the crop that the average of the yields of cotton is now considerably in excess of the yield previous to the war. For example, the yield of cotton under slave labor was about 3,000,000 bales, while at the present time the yield is more than four times that much.

MONEY—1 dollar (100 cents)=49.32d.

WEIGHTS AND MEASURES—Same as Great Britain with the following exceptions:

- 1 wine gallon=0.83333 gallon.
- 1 ale=1.01695 gallon.
- 1 bushel=0.9692 Imperial bushel.
- 1 short ton=2,000 Lbs.
- 1 long ton=2,240 Lbs.

#### *Trade Mark Laws of the United States.*

Act of February 20, 1905.

The first Federal Trade Mark Law, the Act of July 8, 1870, was declared unconstitutional, *U. S. v. Steffens*, 100 U. S., 82; the second, the Act of March 3, 1881, had many defects, among which was the failure to provide for the registration of marks used in interstate commerce, and the third law is the Act of February 20, 1905, which is now in force.

#### *Term.*

A certificate of registration shall remain in force twenty years from its date, except that, in case a trade mark be previously registered in a foreign country, such certificate shall cease to be in force on the day on which the trade mark ceases to be protected in such foreign country, and shall, in no case, remain in force more than twenty years, unless renewed.

A certificate of registration may be, from time to time, renewed for like periods on payment of the renewal fees required, upon request by the registrant, his legal representatives, or transferees of record in the Patent Office, and such request may be made at any time not more than six months prior to the expiration of the period for which the certificate of registration was issued or renewed.

#### *Who May Register a Trade Mark.*

A trade mark may be registered by any person, firm, corporation, or association domiciled within the territory of the United States, or residing in or located in any foreign country which, by treaty, convention, or law, affords similar privileges to the

citizens of the United States, and who is the owner of such trade mark, and uses the same in commerce with foreign nations, or among the several States, or with the Indian tribes, upon payment of the fee required by law and other due proceedings had.

The statute specifies that the "owner" of a trade mark may obtain registration. The application must not be made by a general agent, a manager, a licensee or any one except the owner. It is only necessary to refer to Section 2 of the Act to emphasize this point. This section provides that, in order to create any right in favor of the party filing the application, it must be accompanied by a declaration to the effect that the applicant, or a member of a firm, or an officer of a corporation or an association, believes himself or the firm, corporation or association, in whose behalf he makes the application, to be the owner of the mark, and that no one else has the right to use such trade mark. The statute does not appear to contemplate the registration of a mark to joint owners; registration can be obtained only by an individual, a firm, a corporation, or an association. The United State Patent Office has consistently refused to register to joint applicants.

If there is any doubt as to the ownership of a mark this should be cleared up before the application is filed. To do otherwise is to run the risk of losing the advantage of an early filing date, and probably considerable useless expense will be incurred and the government fee will be lost, as money will not be repaid unless it is paid by actual mistake.

In one case the Patent Office held that after an application had been filed in the name of a company, substitute papers showing that the name of the company had been changed and that this latter company was the owner of the mark, should not be entered. (*Ex parte Certain Cure Co.*, 147 O. G., 772.)

Except as provided by Section 3 of the Act of May 4, 1906, no trade mark will be registered to an applicant residing or located in a foreign country unless such country, by treaty, convention, or law, affords similar privileges to the citizens of the United States, nor unless the trade mark has been registered by the applicant in the foreign country in which he resides or is located, nor until such applicant has filed in this office a certified copy of the certificate of registration of his trade mark in the country where he resides or is located. In such cases it is not necessary to state in the application that the trade mark has been used in commerce with the United States or among the several States thereof.

In addition to an owner of a trade mark who is domiciled in the United States, application for registration may be made by an owner who resides in a foreign country which by treaty or



law affords similar privileges to citizens of the United States. By similar privilege is not meant the privilege of registration under a law of the scope and character of ours, but a country which permits citizens of the United States to register in that country. It has been held that if an applicant is located in a foreign country other than that of which he is a citizen, his application will be governed by the law of the country of location rather than that of citizenship. (Ex parte Haggenmacher, 60 O. G., 438.)

*Not Registrable Trade Marks.*

No trade mark will be registered to an owner domiciled within the territory of the United States unless it shall be made to appear that the same is used as such by said owner in commerce among the several States, or between the United States and some foreign nation or Indian tribe; no trade mark, except as provided by Section 3 of the Act of May 4, 1906, will be registered to an owner residing in or located in a foreign country unless said country, by treaty, convention, or law, affords similar privileges to the citizens of the United States; no trade mark will be registered which consists of or comprises immoral or scandalous matter, or which consists of or comprises the flag or coat of arms or other insignia of the United States or any simulation thereof, or of any State or municipality, or of any foreign nation, or which consists of or comprises any design or picture that has been adopted by any fraternal society as its emblem, unless it shall be shown to the satisfaction of the Commissioner of Patents that the mark was adopted and used as a trade mark by the applicant or applicant's predecessors, from whom title is derived, at a date prior to the date of its adoption by such fraternal society as its emblem, or which trade mark is identical with a registered or known trade mark owned and in use by another, and appropriated to merchandise of the same descriptive properties, or which so nearly resembles a registered or known trade mark owned and in use by another, and appropriated to merchandise of the same descriptive properties as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers; or which consists merely in the name of an individual, firm, corporation, or association, not written, printed, impressed, or woven in some particular or distinctive manner or in association with a portrait of the individual, or merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, or merely a geographical name or term; no portrait of a living individual will be registered as a trade mark, except by the consent of such individual evidenced by an instrument in writing; and no trade mark will be registered which is used in unlawful business, or upon any article injurious in it-

self, or which has been used with the design of deceiving the public in the purchase of merchandise, or which has been abandoned.

Any mark, used in commerce with foreign nations or among the several States or with Indian tribes, may be registered if it has been in actual and exclusive use as a trade mark of the applicant, or his predecessors from whom he derived title, for ten years next preceding the passage of the Act of February 20, 1905.

#### *What May Be Registered.*

Section 5 specifies that no mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade mark on account of the nature of such mark unless the mark is of a certain specified character.

The first exception is that a mark which comprises immoral or scandalous matter, the flag, coat of arms, or other public insignia of the United States, any state, municipality or foreign country, or the emblem of any fraternal society is not registrable even under the ten year proviso. (*In re Cahn, Belt & Co.*, 122 O. G., 354.)

On the ground of public policy it has been ruled that neither the name nor picture of a deceased President of the United States is registrable (*Ex parte Banner Cigar Mfg. Co.*, 138 O. G., 528.) The names and pictures of deceased rulers of other countries are, however, registrable under the present practice.

Marks which are identical with a registered or known mark owned and in use by another and appropriated to goods of the same descriptive properties, or which so nearly resemble a registered or known mark, and appropriated to merchandise of the same descriptive properties as to be likely to cause confusion or mistake in the mind of the public shall not be registered.

Some of the leading decisions of the Court of Appeals of the District of Columbia on the question of what constitutes such similarity as to cause confusion are *Wayne County Preserving Company v. The Burt Olney Canning Company*, 140 O. G., 1003; *In re Indian Portland Cement Company*, 134 O. G., 518; *Peter Schoenhofen Brewing Company v. The Maltine Company*, 134 O. G., 1805, and *In re S. C. Herbst Importing Company*, 134 O. G., 1565. In the *Wayne Co.* case the court said that doubts on the question of similarity between the mark of an applicant and a registrant must be resolved in favor of the registrant.

What constitutes goods of the "same descriptive properties" is an important question which has not been satisfactorily settled. Further decisions of the Court of Appeals of the District of Columbia and other courts on this question must be awaited. In the case of *Walter Baker & Company, Limited v. Harrison*, 138 O. G., 770, in holding that the Commissioner of Patents

erred in sustaining a demurrer to an opposition to registration of a mark for coffee by the owner of a similar mark used on cocoa the Court of Appeals of the District of Columbia laid down this general rule:

"Things may be said to possess the same descriptive properties when they can be applied to the same general use. Coffee and cocoa, when used as beverages, are at once associated as belonging to the class of beverages in general domestic use. They belong to the class of beverages universally used on the table and sold in prepared packages for that purpose. Should the same mark be granted to different persons for use on coffee and cocoa, respectively, the natural and certain result would be, that the one wishing to profit by the use of the same mark would adopt the style of package used by the other, and, by such unauthorized imitation, cause confusion in the mind of the purchasing consuming public as to the quality of the goods so marked. The intent of the statute is to protect the rightful owners of trade marks in their valuable property rights, and it seems to tax the courts to the utmost to protect those rights against the ingenuity of counsel and the designs of sharp competitors. A mark should be denied, not only when used upon goods of the same descriptive properties as a similar registered mark, but when used on goods belonging to the same general class."

In the case of Phoenix Paint & Varnish Co. vs. John T. Lewis & Bros Co., 139 O. G., 990, where the question was whether ready mixed paints and paste paints are goods of the same descriptive properties, this same court held that they are, and said:

"We think two trade marks may be said to be appropriated to merchandise of the same descriptive properties in the sense meant by the statute when the general and essential characteristics of the goods are the same. To rule that the goods must be identical would defeat the purpose of the statute and destroy the value of trade marks. The test is whether there is such a sameness in the distinguishing characteristics of the goods as to be likely to mislead the general public. If there is, only one mark should be registered. Congress evidently intended to prevent the second registration of a mark that would enable an unscrupulous dealer to obtain the benefit of a valuable trade reputation established by conscientious effort and fair dealing to the injury of the public as well as the owner of the mark."

The present Commissioner recently overruled the holding of a former Commissioner, and held that whisky and gin are goods of the same descriptive properties. (P. J. Bowlin Liquor Co. v. J. & J. Eager Co., 148 O. G., 571.)

Some other decisions on the question of what constitutes goods of the same descriptive properties are Florence Mfg. Co. v. J.

C. Dowd & Co., 178 Fed., 73; *Ex parte* The Ohio Garment Company, 153 O. G., 821; American Tobacco Co. v. Polacsek, 170 Fed., 117; *Ex parte* Bindley Hardware Company, 141 O. G., 285; American Stove Co. v. Detroit Stove Works and Barstow Stove Co., 134 O. G., 2245, and Church & Dwight Co. v. Russ *et al.*, 99 Fed., 276; 91 O. G., 228.

A mark which consists merely in the name of an individual, firm, corporation or association is not registrable unless written, printed, impressed or woven in some particular or distinctive manner or in association with the portrait of the individual, provided, however, that a trade mark otherwise registrable shall not be refused registration because of its being the name of an applicant or a portion thereof. This last proviso, which became a law February 18, 1911, was passed to enable a firm, corporation or association to register its name if it is an arbitrary mark. The decisions in the cases of Kentucky Distilleries & Warehouse Co. v. Old Lexington Club Distilling Co., 135 O. G., 220, and *In re* Success Co., 152 O. G., 958, made it impossible for a firm, corporation or association to register all or a substantial part of its firm, corporate or association name which it used as a trade mark if not distinctively displayed, although any individual or other firm, corporation or association could register such mark if it was not substantially its name. The Success Co. could not register the word "Success," although any individual, or other firm, corporation or association the name of which did not include the word "Success" as a substantial part of its name could register this word. Now an arbitrary mark is registrable notwithstanding it is the name or part of the name of the applicant.

A facsimile signature is held to be a distinctive display of a surname, and registrable. (*Ex parte* Mark Cross Co., 102 O. G., 622.)

Writing a surname in script type with a paraph beneath it has been repeatedly held not to be a particular or distinctive manner of display. In *Ex parte* The Amulet Chemical Company, 146 O. G., 719, the Commissioner said that the distinctiveness must be in the name itself; that it was not sufficient to print the name in connection with heraldic devices or other arbitrary matter. What constitutes a distinctive display of a surname is further considered in the cases of *Ex parte* Englehard & Sons Co., 109 O. G., 1886; *Ex parte* Pittsburgh Valve Foundry and Construction Co., 128 O. G., 887; *Ex parte* C. H. Alden, 131 O. G., 2419; *Ex parte* F. Mayer Boot & Shoe Co., 151 O. G., 1014; *Ex parte* Polar Knitting Mills, 154 O. G., 251, and *In re* Artesian Manufacturing Company, 166 O. G., 988.

A word merely descriptive of the goods with which it is used, or of a characteristic or quality of such goods, is not registrable; neither is a word which is merely a misspelling of a descriptive word. It should be noted that it is not necessary for a word to

be directly descriptive in order to come within the prohibition of the statute. The word "Self-Loading" as applied to cartridges was held both by the Commissioner of Patents and the Court of Appeals of the District of Columbia as descriptive, indicating that the cartridges were to be used in a certain type of gun, that is, in a gun commonly known as a "self-loading gun." *Winchester Repeating Arms Co. v. Peters Cartridge Co.*, 30 App. D. C., 505; 134 O. G., 2030.

It was urged in the case of *In re Anti-Cori-Zine Chemical Company*, 151 O. G., 452, that the words "Get Well" as applied to a medicine were registrable, as they described no quality of the medicine; that it was absurd to say that a medicine could "get well," and that if the words as used indicated anything they merely indicated an effect to be produced by the medicine. The court, however, said that these words were a direct claim that the medicine had the property of causing the person who took it to recover from disease, to "get well," and were not registrable.

In the case of *In re Central Consumers' Company*, 140 O. G., 1211, the court laid down what is regarded by some lawyers as a strict rule for determining whether a mark is descriptive; the rule is:

"It was evidently the intention of Congress in placing these restrictions in the Trade Mark Act to prohibit any one from acquiring a property-right, protected by law in its exclusive use, in a name possessing any inherent signification that would, of itself, enhance the sale or value of the article or articles to which it may be applied. In other words, it was intended to limit the selection to mere arbitrary words or designs, the value of which should consist alone in their becoming fixed in the public mind through continued use on the goods of the owner. It was not intended that the mark should lend value to the goods, but that the quality of the goods and the reputation of the owner should ultimately make the mark valuable as a symbol in the connection in which it may be used."

The statute prohibits the registration of "merely a geographical name or term." That such mark is not a valid trade mark was held by the United States Supreme Court in the case of *Canal Co. v. Clark*, 80 U. S., 311, and *Columbia Mill Co. v. Alcorn*, 150 U. S., 460.

The main difficulty relative to this provision is to determine whether a word which is a geographical term and which also has some other well known meaning is primarily geographical, or is arbitrary. The fanciful meaning of such words as Aurora, Delta, Defiance and Selma has been held to predominate in the cases of *Ex parte Little & Co.*, 85 O. G., 1221; *Ex parte Manogue-Pidgeon Iron Co.*, 97 O. G., 2084; *Ex parte Byron Weston Co.*, 99 O. G., 861, and *Ex parte Huenfeld*, 98 O. G., 1968, respectively, and these words have been registered as technical

trade marks. Oriental, Manhattan, Tabasco, Cadillac, Union, Columbia and the outline map of the United States have been held not valid trade marks in the cases of *In re Hopkins*, 128 O. G., 890; *Ex parte The Davis Sewing Machine Co.*, 112 O. G., 1752; *McIlhenny's Son v. The New Iberia Extract of Tabasco Pepper Co., Ltd.*, 153 O. G., 547; *Ex parte Wolverine Mfg. Co.*, 152 O. G., 487; *United States Tobacco Co. v. McGreenery*, 144 F., 531; *Columbia Mill Co. v. Alcorn*, *supra*, and *Ex parte American Sugar Refining Co.*, 144 O. G., 562, respectively. The rules given in the cases above cited bearing on the question of geographical names must be considered if the question is close to determine whether the particular word falls on the geographical or the arbitrary side of the line. It may, however, be safe to say that as a general rule if a word has a well known geographical meaning its arbitrary meaning must be clearly established by the applicant. *Ex parte American Saw Co.*, 58 O. G., 521.

A portrait is registrable with the written consent of the person whose portrait is used as a trade mark, and, even if the entire mark is not described in the statement, it is necessary to state whose picture constitutes a part of the mark. This is now always required. An accepted description following the words "accompanying drawing" in the first paragraph of the statement is "the portrait shown being that of (here give name)" and if the person whose portrait is used is deceased, follow the name by the word "deceased." If the picture is fanciful, the words "the picture being fanciful" should follow the words "accompanying drawing." The *nom de plume* or fancy name of an individual is refused registration unless the consent of the individual is filed.

### *Requirements.*

An application for the registration of a trade mark must be made to the Commissioner of Patents and must be signed by the applicant.

A complete application comprises:

(1) A petition, requesting registration, signed by the applicant.

(2) A statement specifying the name, domicile, location, and citizenship of the party applying, and if the applicant be a corporation or association, the State or nation under the laws of which organized; the class of merchandise (according to the official classification), and the particular description of goods comprised in such class upon which the trade mark has actually been used; a statement of the mode in which the same is applied and affixed to the goods, and the length of time during which the trade mark has been used upon the goods specified. A description of the trade mark itself shall be included, if desired

by the applicant or required by the Commissioner, provided such description is of a character to meet the approval of the Commissioner.

(3) A declaration complying with Section 2 of Act of February 20, 1905, as amended by the Act of February 18, 1909.

(4) A drawing of the trade mark, signed by the applicant, or his attorney, which shall be a facsimile of the same as actually used upon the goods.

(5) Five specimens (or facsimiles, when, from the mode of applying or affixing the trade mark to the goods, specimens can not be furnished) of the trade mark as actually used upon the goods.

(6) A fee of ten dollars.

The petition, the statement and the declaration must be in the English language and written on one side of the paper only.

An application for registration of a trade mark, filed in this country by any person who has previously regularly filed in any foreign country which, by treaty, convention, or law, affords similar privileges to the citizens of the United States an application for registration of the same trade mark, shall be accorded the same force and effect as would be accorded to the same application if filed in this country on the date on which application for registration of the same trade mark was first filed in such foreign country; Provided, That such application be filed in this country within four months from the date on which the application was first filed in such foreign country.

A certificate of registration shall not be issued to an applicant located in a foreign country for any trade mark, for registration of which he has filed an application in such foreign country, until such mark has been actually registered by him in the country in which he is located.

### *The Application.*

A complete application consists of a petition, a statement, a declaration, a drawing, and five specimens of the trade mark. This application must be in writing; must be addressed to the Commissioner of Patents, and must be filed in the Patent Office. Complete forms showing the manner of preparing an application for an individual, a firm, corporation or association will be furnished by B. Singer's offices. An applicant may prosecute his own application, but the office advises an applicant, unless he is familiar with such matters, to employ a competent attorney. An attorney must file a separate power to act in each application; a general power is not sufficient and will not be accepted.

The power of attorney, and the appointment of a representative as required by Section 3 of the Act, may be included in the petition. All application papers except the drawing must be signed by the applicant and not by the attorney of record; the

drawing may be signed by the attorney. The rules require that the application must be made in the English language.

*Name, Domicile, Location and Citizenship.*

The applicant's name, domicile, location and citizenship are required to be given. The Commissioner of Patents has ruled that the name of the applicant must be uniform throughout the papers. *Ex parte Boston Fountain Pen Co.*, 116 O. G., 2531. The failure to give applicant's correct name wherever it appears in an application probably causes as many formal objections to applications to be made by the Patent Office as any other defect. If the applicant is an individual, and the form suggested is followed, it is necessary that the name of the applicant appear in only five places;—namely, the signature to the petition, statement, and declaration, in the preamble to the statement, and in the body of the declaration. If the applicant is a firm, corporation or association, the name of the applicant need not appear in the declaration. After the application is prepared, it would save much time and expense if it were compared to see that the name is absolutely uniform. It is not sufficient that the name appears one place as Co., and another as Company; or as Ltd., in one part of the application, and as Limited in another; as Soc. and Society. It must appear throughout as Company or Co.; not both Co. or Company, etc. If the article "The" is a part of the name of a corporation applicant, it should always be used. The draftsman will often enter the name of the applicant on the drawing according to his idea of what it should be. He should, however, be guided by the name as signed to the statement.

Honorable titles are regarded as forming no part of an applicant's name, and should be omitted. The title, Dr., which is used in many declarations filed by applicants located in Germany, should be omitted. (*In re Charles, Prince de Loewenstein*, 108 O. G., 562.)

The statute specifies that both the "domicile" and "location" shall be given. The forms prepared by the Patent Office suggest that an individual specify his residence and his place of doing business; a firm, their domicile and place of doing business, and a corporation or association, its location and place of doing business. What is important to notice is that it is not sufficient to give the place of doing business only: the residence, domicile or location, as the case may be, must also be specified. The place of doing business, and the residence, domicile or location will often be the same, but this fact does not avoid the necessity of particularly mentioning both. The residence, domicile or location may be given generally, while the place of doing business should be definitely stated. For instance, an individual may state that he resides at Vienna, Austria, but should state that his place



of business is a certain street and number in said city when such is the case.

An individual should specify of what nation he is a citizen, or of what ruler he is a subject. The citizenship of a firm sufficiently appears if the domicile is specified, although the forms indicate that the names of the individual composing a firm should be given, and their citizenship specified. There appears to be no good reason why the names of the persons composing the firm, and their citizenship, should not be given. To do this will avoid the request almost sure to be made, that they be specified. If, however, a firm does not desire to specify the names of the persons composing it and their citizenship, it may refuse upon good authority. (*Smith v. Reynolds & Jacobs*, 3 O. G., 214.)

#### *Description of the Mark.*

The Act as now amended by the Act of February 18, 1909, provides that "a description of the mark itself shall be included, if desired by the applicant or required by the Commissioner, provided such description is of a character to meet the approval of the Commissioner."

It is the practice of the office since this amendment was passed to require a description of the mark if it contains what appears to be a facsimile signature, or if there is any doubt as to the character of the mark. Of course, an applicant may describe his mark if he desires, this description meeting the approval in the first instance of the Examiner of Trade Marks and the Commissioner on appeal, if the applicant and the Examiner cannot agree. The office will now insist that if any of the mark is described all shall be described. This, however, does not apply if the description is merely the identification of a picture, a statement in regard to a facsimile signature, or an explanation of a conventional lining to show color. This description should follow the words "accompanying drawing" in the first paragraph of the statement. It is the practice to require a description of color if the drawing is lined for color according to the conventional lining given in the Patent Rules. If the drawing is lined, the color must be described. *Ex parte M. Zimmerman Co.*, 127 O. G., 1991. If it is not desired to claim color, the drawing should not show the conventional lining. Color may be claimed without lining the drawing to show color. For instance, if the mark is a red star, the following may appear after the words "accompanying drawing," "consisting of a star printed in red." If the mark is a portrait of a living individual or consists in part of such a portrait, the written consent of such individual to the use and registration of his portrait as a trade mark must be filed, and the portrait should be described after the words "accompanying drawing" as follows: "consisting of the portrait of," or

"the portrait being that of (here give name)." If the individual is deceased the description should be "the portrait being that of (here give name), deceased." If the picture is fanciful, the description should be: "the picture being fanciful."

How the mark is applied or affixed to the goods is usually described in the last paragraph of the statement. All the different methods of using the mark may be enumerated, but one of the ways specified must be the manner of use shown by the specimens. In other words, the allegation of use must correspond with the proof. No reference should be made to the use of the mark on letter heads, circulars or advertising matter. The Act particularly specifies that a trade mark may be deemed to be affixed to the article when it is placed in any manner in or upon the article itself or the package or receptacle or upon the envelope or other thing in, by or with which the goods are packed, enclosed or prepared for sale. (Section 29.) In the case of *Hay v. Todd Mfg. Co. v. Querns Bros.*, 86 O. G., 1323, the Commissioner ruled that a mark was affixed or attached to the goods if it was so associated with the goods as to distinguish them by the particular mark used.

#### *How Long Used.*

If the mark has been recently adopted it is best to give the day of the month, or at least the month, and year when use was first begun. If the date when use of the mark was first begun is not given in the application as originally filed, it will be necessary to file a new declaration with the amendment specifying the date of use, or, if an earlier date of use is claimed than was originally claimed, a new declaration is likewise required. If the application is under the ten year proviso and use was begun in 1895 it is necessary to be specified as to the date in order to assure the office that use was begun prior to February 20th of that year.

The forms of application approved by the Commissioner indicate that the applicant's predecessors should be given, but it is not necessary to do this. If the applicant's predecessor is a registrant, however, it would appear best to give the name of the predecessor to prevent the registered mark from being cited against his application.

#### *Drawing.*

The kind of drawing that must be furnished is clearly indicated by Rule 36 of the Rules for the Registration of Trade Marks. It should be made on white bristol board of sufficient thickness to prevent it from bending or breaking easily; the size must be 10 by 15 inches; one inch from the edges must be a marginal line; all work and signatures must be within this line, not even

a letter of the signature of the applicant or his attorney must be outside of this line; a blank space not less than one and one-fourth inches, measuring downwardly from the top marginal line, must be left for a heading; India ink must be used and all lines must be clear, sharp and solid, and made with the pen only; pale or rough lines will usually cause a drawing to be rejected. The name of the owner of the trade mark signed by himself or his attorney must be placed at the lower right hand corner, and it is here again insisted that the name of the applicant as signed to the drawing is the only one of the original papers which may be signed by the attorney of record. Witnesses to the signature of a drawing are not required.

The mark shown in the drawing must agree exactly with the specimen or with the mark shown in the copy of the foreign certificate. *Ex parte* Hoyt Bros. & Co., 124 O. G., 1523.

If a drawing is lined to show the mark in color the conventional lining given opposite page 88 of the Patent Rules must be followed.

Section 16 of the Trade Mark Act provides that registration under this Act shall be *prima facie* evidence of ownership, and the Court of Appeals of the District of Columbia held, in the case of *Johnson v. Brandean*, 139 O. G., 732, that a registrant has a *prima facie* right to everything which appears upon the drawing. Section 5 prohibits the registration of anything but arbitrary matter except under the ten year proviso. Now, the practical difficulty is that many foreign countries permit the registration of the whole label, and the certified copy of the foreign certificate often shows matter registered that is not arbitrary. In the case of *Ex parte* Pietro, 127 O. G., 2394, the Commissioner held that the only mark which a foreign applicant is entitled to register in this country is the mark which he has registered in the country in which he is located. This ruling was, however, modified by the decision in the case of *Ex parte* Soc. <sup>la</sup> Prod. <sup>ti</sup> Chim. <sup>co</sup> Farmac. <sup>cl</sup> A. Bertelli, &c., 144 O. G., 817, so that now a foreign applicant must show in his drawing all the arbitrary features of the mark as registered abroad and must omit or disclaim all that are not arbitrary. This, of course, refers to the registration of a technical mark and not to an application for registration under the ten year proviso. What are and what are not arbitrary features must be determined by the provisions of Section 5 and the ruling in many cases interpreting that section.

### *Specimens.*

Under the authority of the statute to require specimens, the Commissioner has by Rule 22 required the filing of five specimens of the trade mark as actually used upon the goods or the same number of facsimiles, when from the mode of applying or

affixing the mark to the goods specimens cannot be furnished. A great deal of trouble would be saved applicants and the office if applicants would keep in mind that the statute specifically states that specimens "as actually used" must be presented. Mutilated or cut out specimens will always be objected to and should not be filed. Proof copies of labels are probably never used on merchandise, and should not be filed as specimens. It is not to be expected the office will pass such alleged labels. If a stencil is used, impressions from the stencil on plain pieces of paper will be accepted as satisfactory. Perhaps the most satisfactory facsimiles, which, according to the rule, are accepted when it is not practicable to furnish specimens, are photographs of all or a part of the article with the trade mark plainly appearing thereon. This is a good way to show the use of a mark cast into a machine.

#### *Declaration.*

The regular form of declaration should be filed; no changes or variations should be attempted. If the regular form is not followed the applicant should be careful that the requirements of Section 2 of the Act and Rules 31, 32, 33 and 34 are all complied with. It should be kept in mind that this declaration must be made by the applicant, if the applicant is an individual, by a member of the firm, if a firm is the applicant, or by an officer of a corporation or an association if such a body is the owner of the mark. If a corporation or an association is the applicant, the statute is not satisfied if the declaration is made by a clerk or manager or some similar employee. The declaration should be signed by an individual who is recognized as an officer by the charter, or the law under which the body was organized.

The provision of Section 2 which relates particularly to foreign applicants is as follows:

"If the applicant resides or is located in a foreign country, the statement required shall, in addition to the foregoing, set forth that the trade mark has been registered by the applicant, or that an application for the registration thereof has been filed by him in the foreign country in which he resides or is located, and shall give the date of such registration, or the application therefor, as the case may be, except that in the application in such case it shall not be necessary to state that the mark has been used in commerce with the United States or among the states thereof. The verification required by this section may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, charge d'affaires, consul, or commercial agent holding commission under the Government of the United States, or before any notary public, judge, or magistrate having an official seal and authorized to administer

oaths in the foreign country in which the applicant may be whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States."

It is first to be noted that the word "statement" as here used is not synonymous with the word "statement" as used by the Patent Office to distinguish that part of the application which gives the name, location, domicile, citizenship, etc., of the applicant. As here used it means the declaration. (*Ex parte* Königliches Hofbrauamt, München, 146 O. G., 720.)

It is to be noted that if the mark has been registered in the foreign country in which the applicant resides or is located, the fact of registration and the date thereof should be set forth, and it is the established practice to give the number of the foreign certificate of registration. If the mark has not been registered, the fact that application for registration has been made should be stated with the date of the application. If the mark has been registered, no reference need be made to the date of application for registration. Care should be given not to give the date of application as the date of registration or *vice versa*. In the case of *Ex parte* Felten & Guillaume-Lahmeyerwerke Actien-Gesellschaft, 150 O. G., 569, a new declaration was required, the applicant having stated in its declaration that the mark had been registered on a certain date, which was, in fact, the date on which application for registration had been filed.

The Act clearly sets forth before whom the verification may be made, and requires the authority of the person before whom made to be proved by the certificate of a diplomatic or consular officer of the United States in case it is not made before such officer.

#### *Representative.*

Section 3 provides for the designation in writing of some person residing in the United States upon whom notice of proceedings affecting the right to the trade mark may be served. Service upon this representative is made by the Act as effective as service upon the registrant. It is important for a registrant to notify the Commissioner of Patents if any change is made in the representative or his address, for leaving a copy of a valid notice at the last address of the representative of which the Commissioner of Patents has been notified is sufficient to serve notice upon the registrant. The appointment is usually made as a part of the petition, although this may be done by a separate instrument. A general power of attorney to act is not a sufficient compliance with the requirements of Section 3; there must be a statement that a certain person is appointed to accept notice of proceedings or upon whom process may be served as required by this section of the Trade Mark Act. In the case of *Ex parte* Wertheimer & Cie, 132 O. G., 679, it was ruled by

the Commissioner that the power to appoint a representative may not be delegated to an attorney; that the appointment must be made by the applicant for registration.

#### *Examination.*

All complete applications for registration are considered, in the first instance, by the examiner in charge of trade marks. Whenever, on examination of an application, registration is refused for any reason whatever, the applicant will be notified thereof. The reasons for such refusal will be stated, and such information and references will be given as may be useful in aiding the applicant to judge of the propriety of further prosecuting his application.

The examination of an application and the action thereon will be directed throughout to the merits, but, in each letter, the examiner shall state or refer to all his objections.

If, on examination of an application for the registration of a trade mark, it shall appear that the applicant is entitled to have his trade mark registered under the provisions of the law, the mark will be published in the Official Gazette at least once. Such publication shall be at least thirty days prior to the date of registration.

If no notice of opposition be filed within thirty days after such publication the applicant or his attorney will be duly notified of the allowance of his application, and a certificate of registration will be issued as provided in Rule 58.

The weekly issue closes on Thursday, and the certificates of registration of that issue bear date as of the fourth Tuesday thereafter.

#### *Interference, Opposition and Cancellation.*

Whenever application is made for the registration of a trade mark which is substantially identical with a trade mark appropriated to goods of the same descriptive properties, for which a certificate of registration has been previously issued to another, or for registration of which another had previously made application, or which so nearly resembles such trade mark, or a known trade mark owned and used by another, as, in the opinion of the Commissioner, to be likely to be mistaken therefor by the public, an interference will be declared.

The practice in trade mark interferences will follow, as nearly as practicable, the practice in interferences between applications for patents.

Before the declaration of interference, all preliminary questions must have been settled by the examiner in charge of trade marks, and the trade mark which is to form the subject-matter of the controversy must have been decided to be registrable, and

must have been published at least once in the Official Gazette of the Patent Office.

Whenever two or more applicants are found to be claiming substantially the same registrable trade mark, and the application of one of the applicants is ready for publication, the examiner in charge of trade marks may require the other applicants to put their applications in condition for publication within a time specified, in order that an interference may be declared. If any party fail to put his application in condition for publication within the time specified, the declaration of interference will not be delayed, but after final judgment, the application of such party will be held for revision and restriction, subject to interference with other applications or registered trade marks.

The examiner in charge of interferences may, either before or in his final decision in any interference or opposition, direct the attention of the Commissioner to any matter which may have come to his notice, which cannot be acted upon by him, which in his opinion precludes a proper determination of questions raised by the proceeding, or which amounts to a statutory bar to registration of the mark to any or all of the parties. The Commissioner may, before judgment, suspend the interference or opposition and remand the same to the examiner in charge of trade marks for his consideration of the matters to which attention has been directed. If the case be not so remanded, the examiner in charge of trade marks will, after judgment, consider any matter affecting right to registration which may have been brought to his attention, unless the same shall have been previously disposed of in the proceeding. From the decision of the examiner in charge of trade marks appeals may be taken as in other cases.

Motions to dissolve an interference upon the ground that no interference in fact exists, or that there has been such irregularity in declaring the same as will preclude a proper determination of the question of the right of registration, or which deny the registrability of an applicant's mark, should contain a full statement of the grounds relied upon, and should, if possible, be made not later than the thirtieth day after the notices of the interference have been mailed. Such motions and all such motions of a similar character, should be accompanied by a motion to transmit the same to the examiner in charge of trade marks, and such motion to transmit will be noticed for hearing upon a day certain before the examiner in charge of interferences. When in proper form, the motion presented will, with the files and papers, be transmitted, by the examiner in charge of interferences, for determination, to the examiner in charge of trade marks, who will thereupon fix a day certain when said motion will be heard before him upon the merits, and give notice thereof to all the parties. If a stay of proceedings be desired,

a motion therefor should accompany the motion for transmission.

When the motion has been decided by the examiner in charge of trade marks, the files and papers, with his decision, will be sent at once to the docket clerk.

Motions to shift the burden of proof should be made before, and will be determined by, the examiner in charge of interferences. No appeal from the decision on such motion will be entertained, but the matter may be reviewed on appeal from the final decision upon the question of priority.

The decision of the examiner in charge of trade marks, upon a motion for dissolution, will be binding upon the examiner in charge of interferences unless reversed or modified on appeal. Unless appeal be taken within the time limited for appeal, the examiner in charge of trade marks will return the files and papers with his decision to the examiner in charge of interferences.

Any person who believes he would be damaged by the registration of a mark may oppose the same by filing a written notice of opposition, stating the grounds therefor, within thirty days after the publication of the mark sought to be registered, which notice of opposition shall be accompanied by the fee required by law and shall be verified by the person filing the same before one of the officers mentioned in Section 2 of the Act of February 20, 1905. An opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless duly verified by the opposer, within a reasonable time after such filing. A duplicate copy of the notice of opposition must be filed, either with the notice of opposition or within a reasonable time after the filing of the same.

Any person deeming himself to be injured by the registration of a trade mark in the Patent Office, may, at any time, make application to the Commissioner to cancel the registration thereof. Such application shall be filed in duplicate, shall state the grounds for cancellation, and shall be verified by the person filing the same, before one of the officers mentioned in Section 2 of the Act of February 20, 1905.

If it shall appear, after a hearing before the examiner of interferences, that the registrant was not entitled to the use of the mark at the date of his application for registration thereof, or that the mark is not used by the registrant, or has been abandoned, and the examiner in charge of interferences shall so decide, the Commissioner shall cancel the registration of the mark, unless appeal be taken within the limit fixed.

In case of opposition, and of applications for cancellation, the examiner in charge of trade marks shall forward the files and papers to the examiner in charge of interferences, who shall give notice thereof to the applicant or registrant. The applicant



or registrant must make answer at such time, not less than thirty days from the date of the notice, as shall be fixed by the examiner in charge of interferences.

The proceedings, on oppositions, and on applications for cancellation, shall follow, as nearly as practicable, the practice, in interferences between applications for patents.

#### *Opposition Proceedings.*

A notice of opposition filed within thirty days after publication of the mark in the Official Gazette, signed by an attorney authorized to practice before the Patent Office and, subsequently and within a reasonable time, verified by an officer of the opponent company and accompanied by a power of attorney simultaneously executed, giving to the attorney by whom the opposition was signed power to file an opposition to the application in question and ratifying the act of the attorney in so doing, is properly filed. The notice of opposition need not allege the authority of the attorney to act in such a case. The office will assume such authority on the part of any attorney admitted to practice there. A notice of opposition thus filed is not demurrable because it fails to allege the authority of the attorney to file it. If the oponent were required to give a power of attorney to oppose the particular registration, he could as well sign the notice of opposition himself. To require such a power would be to defeat the provisions of the amendment giving the attorney authority to do so. (Citing, *Wellcome vs. Baum*, 135 O. G., 895).

The allegation that the oponent has made use of the mark claimed since a date prior to the applicant's use thereof, is enough to show damage without an allegation that the opponent was the first to adopt and use the mark. (Citing, *Battle Creek Sanitarium Co., Ltd. vs. Fuller*, 134 O. G., 1229; *Underwood Typewriter Co. vs. A. B. Dick Co.*, *Trade Mark Reporter*, Vol. 1, p. 35.) (*Imperial Brush Factory vs. George Borgfeldt & Co.*, February 20, 1911.)

An importer of goods under a foreign trade mark has a standing to oppose the registration of the mark by another since, if the application for registration were granted, the registrant might file the mark in the custom house, under Sec. 27 of the Trade Mark Law and prevent the importation of the goods. This fact is sufficient to give the importer an interest in the subject-matter that will support an opposition. It is enough that the notice of opposition alleges the importation of brushes bought from the Imperial Brush Factory since the year 1891 under the mark in question. It is not necessary to allege that the mark is the property of the Imperial Brush Factory and a demurrer will not lie for the absence of such an allegation.

The application to which the opposition was filed in this case

was the same as that opposed in the case last above cited. Taking these two cases together, it appears that not only the owner of a trade mark sought to be appropriated, but also one who imports goods under that mark may oppose the registration of the mark in the Patent Office by another. (*Arai & Briesen vs. George Borgfeldt & Co.*, Feb. 20, 1911.)

A demurrer may be interposed as a matter of right to an amended notice of opposition before an answer or plea is interposed, and such a demurrer should be considered on the merits and should not be overruled for the alleged reason that all the grounds urged might and should have been urged against the original notice of opposition upon the demurrer which was interposed to such notice and sustained. (*La Grange Mills vs. Daniels & Pickering Co.*, Feb. 10, 1911.)

A notice of opposition once filed can not be dismissed without prejudice on motion of the opponent and against the objection of the applicant, but must proceed to judgment and the matter be finally disposed of. Otherwise should it be necessary to republish the mark, a new notice of opposition might be filed and the applicant be again put to the trouble and annoyance of defending his right to the mark. (*Cravennette Co. vs. Rogers & Thompson*, July 14, 1911.)

A formal withdrawal of a notice of opposition accompanied by a formal abandonment of his application by the applicant may be allowed and the proceeding thereby terminated. (*Sheffield Cutlery Co. vs. Sheffield Car Co.*, July 20, 1911.)

#### *Ground for Cancellation.*

An application to cancel the trade mark "Autolene" on the ground that the registrant permits the use of the mark by others in fraud upon the public is not sustained by proof that the mark is used by a subsidiary distributing company of the registrant. (*Crescent Oil Co. vs. Robinson*, June 15, 1911.)

#### *Procedure by Cross Bill in the Patent Office.*

A novel question of procedure in the Patent Office in opposition cases was brought up by the answer of an applicant to a notice of opposition, requesting that the opponent's mark be cancelled. The application was that of the United Drug Co. for the registration of the word "Rexall" for certain pharmaceutical preparations. The opposition was filed by the Burton Medicine Co., whose trade mark "Rex Oil" was registered in the Patent Office. This latter registration the applicant, in its answer, desired to have cancelled. It was urged in behalf of the applicant that there was nothing in the statute necessitating the consideration of questions of opposition and cancellation in separate proceedings, and that they might as well be dealt with

together, following the practice in equity in analogous cases. The Commissioner holds, however, that the question of cancellation is a distinct issue and not germane to the subject-matter of the proceedings in opposition. A cross bill in equity cannot be filed unless it relates to the main subject-matter of the original bill, and in this instance the subject-matter of the two proceedings appears to be entirely distinct. (*Burton Medicine Co. vs. United Drug Co.*, 179 O. G., 288.)

### *Appeals.*

From an adverse decision of the examiner in charge of trade marks upon an applicant's right to register a trade mark, or to renew the registration of a trade mark, or from a decision of the examiner in charge of interferences, an appeal may be taken to the Commissioner in person, upon payment of the fee required by law.

Upon receiving a petition stating concisely and clearly any proper question which has been acted upon by the examiner in charge of trade marks and which does not involve the merits of the trade mark claimed, the refusal of registration of the trade mark, or a requirement for division, and also stating the facts involved and the point or points to be reviewed, an order will be made fixing a time for hearing such petition by the Commissioner, and directing the examiner to furnish a written statement of the ground of his decision upon the matters averred in such petition within five days after being notified of the order fixing the day of hearing. The examiner shall, at the time of making such statement, furnish a copy thereof to the petitioner. No fee is required for such a petition.

From the adverse decision of the Commissioner of Patents upon the right of an applicant to register a trade mark, or to renew the registration of a trade mark, or from the decision of the Commissioner in cases of interference, opposition or cancellation, an appeal may be taken to the court of appeals of the District of Columbia in the manner prescribed by the rules of that court.

### *Assignments.*

Every registered trade mark and every mark for the registration of which application has been made, together with the application for registration thereof, shall be assignable in connection with the good will of the business in which the mark is used. Such assignment must be by an instrument in writing and duly acknowledged according to the laws of the country or State in which the same is executed. Provision is made for recording such assignments in the Patent Office; but no such assignment will be recorded unless it is in the English language, nor unless an application for the registration of the mark shall have been

first filed in the Patent Office, and such assignment must identify the application by serial number and date of filing, or, when the mark has been registered, by the certificate number and the date thereof. No particular form of assignment is prescribed.

An assignment shall be void as against any subsequent purchaser for a valuable consideration, without notice, unless it be recorded in the Patent Office within three months from the date thereof.

The certificate of registration may be issued to the assignee of the applicant, but the assignment must first be entered of record in the Patent Office.

A decision of the New York Supreme Court at special term illustrates the principle, that the sale of a business carries with it the trade mark and good will. The trustee of a bankrupt corporation, sold, by order of the court, all the property of the bankrupt, except the accounts and bills receivable. Subsequently he was authorized by the court to sell the good will of the business formerly conducted by the bankrupt and the trade mark used in connection therewith, the word "Hydrolithic." Thereupon he executed an assignment of such trade mark and good will. In the adjustment of conflicting claims, arising out of these two transactions, the court held, that the purchaser of the assets of the bankrupt acquired the good will and the trade mark so that the second assignee took nothing under the conveyance from the trustee. (*Waterproofing Co. vs. Hydrolithic Cement Co.*, N. Y. Law Journal, Dec. 23, 1911.)

#### *Recording Trade Marks with Collectors of Customs.*

No small advantage is obtained after registration of a mark has been secured by complying with the provisions of Section 27 of the Act. The Treasury Department has issued the following order for the enforcement of said section:

#### *Trade Marks.*

TREASURY DEPARTMENT, September 7, 1909.

*To collectors of customs and others concerned:*

The attention of officers of the customs and others is invited to the following provisions of Section 27 of the Act, approved February 20, 1905, effective April 1, 1905:

"SEC. 27. That no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade mark registered in accordance with the provisions of this Act, or shall bear a name or mark calculated to induce the public to believe that the article

is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any custom-house of the United States, and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade mark, issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade mark; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs."

The provisions of this section give to manufacturers and traders located in foreign countries, which, by treaty stipulations, give similar privileges to the United States, the same advantages as are given to domestic manufacturers and traders. The act does not affect names or trade marks heretofore recorded in the Treasury Department, and as to them the protection granted so far as concerns prohibition of importation will continue. Nor does the act appear to make it compulsory on the part of domestic manufacturers or traders, or foreign manufacturers or traders, to register names (not trade marks) with the Commissioner of Patents, in order to prevent illegal importations.

Domestic manufacturers and traders and foreign manufacturers and traders, to avail themselves of the privileges of the act, so far as concerns trade marks, are required to register their trade marks with the Commissioner of Patents before the Treasury Department can act.

Applications for recording the names and trade marks in this Department under Section 27 will state the name of the owner, his residence, and the locality in which his goods are manufactured, and in the case of trade marks should be accompanied with a certified copy of the certificate of registration of his trade mark issued in accordance with the provisions of the act and the names of the ports to which facsimiles should be sent. In the case of the name of a domestic manufacture, manufacturer, or trader (not registered as a trade mark in the Patent Office), the application must be accompanied by the proper

proof of ownership and proof as to the country or locality in which his goods are manufactured, which must consist of the affidavit of the owner or one of the owners, certified by an officer entitled to administer oaths and having a seal.

On the receipt by a customs officer of any such facsimiles, with information from the Department that they have been recorded therein, he will properly record and file them and will exercise care to prevent the entry at the custom house of any article of foreign manufacture copying or simulating such mark.

No fees are charged for recording trade marks in the Treasury Department and custom houses.

A sufficient number of facsimiles should be forwarded to enable the Department to send one copy to each port named in the application, with ten additional copies for the files of the Department.

Especial attention is invited to the provision in said section prohibiting the entry of articles "which shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured," and collectors and other officers of the customs are instructed to use due diligence to prevent violations of this provision.

The provisions of the act also apply to Porto Rico, the Philippine Islands, Hawaii, and any other territory under the jurisdiction and control of the United States.

Attention is also invited to the following provisions of Section 3 of the act approved May 4, 1906, effective July 1, 1906:

"SEC. 3. That any owner of a trade mark who shall have a manufacturing establishment within the territory of the United States shall be accorded, so far as the registration and protection of trade marks used on the products of such establishments are concerned, the same rights and privileges that are accorded to owners of trade marks domiciled within the territory of the United States by the Act entitled "An Act to authorize the registration of trade marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same," approved February twentieth, nineteen hundred and five."

This Department has ruled that affidavits accompanying applications for recording the names of foreign manufactures, manufacturers, or traders (not registered as trade marks in the Patent Office) may be certified by American consular officers.

JAMES B. REYNOLDS, *Acting Secretary*.

*Classification of Merchandise Under the Act of May 4, 1906.*

By Section 2 of the Act of May 4, 1906, amending the Trade Mark Act, the Commissioner of Patents was required to establish

classes of merchandise for the purpose of trade mark registration. All goods are now classified in 49 classes, as shown by the official classification appearing below.

The numbers of the classes run from 1 to 50, inclusive, except that there is no class 18, this class having been abolished after fifty classes had been established. The titles of the class should appear in the application exactly as stated in this official classification; no change whatever should be made. To make any changes will result in the requirement for an amendment as soon as the change is noted by the Examiner of Trade Marks or his assistants. If any change escapes their notice, and the application is passed to issue, the case will be withdrawn from the issue and the change be required to be made if the error is discovered by the proofreaders. No contest has ever resulted over the question whether the classification adopted is fair to all concerned. The number of classes is less than the number adopted by the International Bureau at Berne, the French and some other foreign Patent Offices. Classes 13, 39 and 46 are very broad and general. These often enable a manufacturer or producer of such lines of goods to include all the goods or produce handled by him.

1. Raw or partly prepared materials.
2. Receptacles.
3. Baggage, horse equipments, portfolios, and pocketbooks.
4. Abrasive, detergent, and polishing materials.
5. Adhesives.
6. Chemicals, medicines, and pharmaceutical preparations.
7. Cordage.
8. Smokers' articles, not including tobacco products.
9. Explosives, firearms, equipments and projectiles.
10. Fertilizers.
11. Inks and inking materials.
12. Construction materials.
13. Hardware and plumbing and steam-fitting supplies.
14. Metals and metal castings and forgings.
15. Oils and greases.
16. Paints and painters' materials.
17. Tobacco products.
19. Vehicles, not including engines.
20. Linoleum and oiled cloth.
21. Electrical apparatus, machines and supplies.
22. Games, toys and sporting goods.
23. Cutlery, machinery, and tools and parts thereof.
24. Laundry appliances and machines.

25. Locks and safes.
  26. Measuring and scientific appliances.
  27. Horological instruments.
  28. Jewelry and precious metal ware.
  29. Brooms, brushes and dusters.
  30. Crockery, earthenware and porcelain.
  31. Filters and refrigerators.
  32. Furniture and upholstery.
  33. Glassware.
  34. Heating, lighting and ventilating apparatus, not including electrical apparatus.
  35. Belting, hose, machinery packing, and non-metallic tires.
  36. Musical instruments and supplies.
  37. Paper and stationery.
  38. Prints and publications.
  39. Clothing.
  40. Fancy goods, furnishings and notions.
  41. Canes, parasols and umbrellas.
  42. Knitted, netted and textile fabrics.
  43. Thread and yarn.
  44. Dental, medical and surgical appliances.
  45. Beverages, non-alcoholic.
  46. Foods and ingredients of foods.
  47. Wines.
  48. Malt extracts and liquors.
  49. Distilled alcoholic liquors.
  50. Merchandise not otherwise classified
- Note.—Class 18 was abolished February 24, 1909.

*Law in Force in The United States to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

Section 27 of the Trade Marks Act of 1905 prohibits the importation of articles bearing a false copy or imitation of trade marks registered in the United States, or of a trade mark recorded in the United States Treasury Department, or bearing a false indication of United States or foreign origin.

The protection of the Act as regards trade marks and trade names is extended to foreigners resident in countries which give similar privileges to the citizens of the United States, provided they duly register their trade marks or record their trade names in the United States. Anyone unlawfully using a trade mark registered under the Act is liable to an action for damages at the suit of the owner. Only civil actions are possible. Repre-



sentatives of foreign governments cannot initiate proceedings. Damages may also be claimed for the imitation of trade marks not registered in the United States and of other marks on the ground of unfair trade by the owner of such marks who has to prove fraudulent intention.

By Section 7 of the 1909 Tariff Act all articles of foreign manufacture or production capable of being marked, stamped, branded, or labelled without injury, must be marked, stamped, branded, or labelled in English so as to indicate their country of origin, and all packages containing imported goods must be marked, stamped, branded, or labelled in English so as to indicate their country of origin.

Marking Goods: "Registered U. S. Patent Office," or "Reg. U. S. Pat. Off."

#### *Foreigner Having Manufacturing Establishment in The United States.*

By Section 3 of the Amendatory Act of May 4, 1906, it is provided that if the owner of a trade mark has a manufacturing establishment within the United States, he shall be accorded, so far as the registration and protection of trade marks used on the products of such establishment are concerned, the same rights and privileges which are given to owners of trade marks domiciled within the United States. A special form of application is required for registration of a mark which is used upon articles produced by a foreigner in a manufacturing establishment located in this country. It is not necessary to have the mark registered in the country in which the applicant is located, but the applicant must swear that the goods for which the trade mark is claimed are produced in an establishment located in the United States.

#### *International Convention.*

Section 4 of the Trade Mark Act contains the important requirement that a certificate shall not be issued until a foreign applicant has actually secured registration in the country in which he is located. The evidence of the fact of registration in the foreign country which has always been accepted is the certified copy of the foreign certificate (*Ex parte* Beckett, 119 O. G., 340), and the copy must be certified by the proper foreign government official. A copy of the foreign certificate sworn to before a United States Consul or other official will not be accepted.

This certified copy of the foreign certificate must be presented if application is made for the registration of a mark under the ten year proviso, as well as if the application is for the registra-

tion of a technical trade mark. (*Ex parte* Actien-Gesellschaft für Aniline-Fabrikation, 129 O. G., 2857.)

#### DECISIONS.

##### *Ten-Year Proviso.*

That nothing herein shall prevent the registration of any mark used by the applicant or his predecessors, or by those from whom title to the mark is derived, in commerce with foreign nations or among the several states, or with Indian tribes, which was in actual and exclusive use as a trade mark of the applicant or his predecessors from whom he derived title for ten years next preceding the passage of this Act. (Section 5.)

The fact that an application for the registration of a mark is made under the ten year clause, does not preclude its registration as a technical trade mark, if the mark be registrable as such. In the case, therefore, of such a mark, thus applied for, its registrability is to be determined by the principles applicable to a technical trade mark. The applicant is not bound to establish actual and exclusive use for ten years preceding the passage of the Act. Use of a conflicting mark, therefore, from a date later than the applicant's use of his mark, is no bar to the registration. (*International Food Co. vs. Price Baking Powder Co.*, 150 O. G., 827.)

Upon an application for the registration of the word "Spear-mint" as a trade mark for chewing gum, under the ten year clause of the trade marks act, an opposition was filed by another manufacturer upon the ground that the word had not been in actual and exclusive use by the applicant for ten years prior to April 1, 1905. Testimony being offered satisfactorily showing the use of the mark by others within that period, registration was held to be properly refused. (*Wrigley & Co. vs. Norris*, 152 O. G., 48.)

The words "French Opera" as a trade mark for coffee, together with a picture of a building, said to be the French opera house at New Orleans, is anticipated by the registration of the word "French" for chocolate; hence the former mark is not registrable under the ten year clause, because not in actual and exclusive use during the requisite period by the applicant. (*Ex parte*, *American Coffee Co.*, 152 O. G., 229.)

The working of the trade mark act is well illustrated in this case, in view of the fact that the word "French" cited as an anticipation of the mark applied for, was itself registered under the ten year clause of the act, upon the theory that it had been in exclusive use during the requisite time by the registrant, whereas it is evident that, if its use was sufficient to prevent the registration of the other mark, the use of the other mark is

sufficient to invalidate the existing registration of the word "French."

Perhaps the most important construction that the ten year clause of the trade marks act has received in the Federal courts is contained in a decision of the Circuit Court for the Southern District of New York, just reported.

The application was for a preliminary injunction, to restrain the use of the word "Knox-All," a trade mark for pencils, as an infringement upon the mark "Beats-All" for the same goods. Upon the motion the defendant interposed the objection, among others, that the complainant's trade mark was expressive simply of quality and character and, therefore, not properly to be protected as a trade mark. The court said that, with the objection that the mark was one of quality, it entirely agreed and without proof in the case that the word had acquired a secondary meaning, as indicating goods of the complainant's manufacture, even though originally its use was descriptive, the application for injunction must fail. Such evidence, however, the court found in the case, by resort to the certificate of registration of the mark in the Patent Office under the ten year clause of the act. The basis of the registration of course was that, while not a technical trade mark, it had been in actual and exclusive use by the applicant for ten years prior to the passage of the act. The court said that this registration was at least *prima facie* evidence of such secondary meaning. Such, in the opinion of the court was the meaning of this section of the trade marks act. Instead of the proof that has heretofore been necessary in suits over marks of this character, to show, by evidence of use in the trade, that the mark has acquired the secondary meaning in question, Congress saw fit to establish an arbitrary period. Use during that period having been established, it is accepted, under the act, as evidence of the secondary meaning attaching to the mark and registration is granted, the registration being thereafter *prima facie* evidence of the right to exclusive use of the mark. The court, however, calls attention to the fact that, under the trade mark law, registration is only *prima facie* proof in any case, and suggests that it is, therefore, to be considered merely *prima facie* proof of the existence of the secondary meaning and subject to be rebutted by evidence that the mark registered had not in fact, acquired the secondary meaning which the registration *prima facie* indicates. The suggestion is certainly a novel and interesting one as to the meaning of this section of the act. It is believed, however, that the only *prima facie* effect of the certificate of registration is as to the actual and exclusive use during the period of ten years, and that it is the evidence of such use which is intended to be rebuttable. So far as the right to register is concerned, such actual and exclusive use during the period of ten years is not *prima facie*

evidence of the secondary meaning attaching to the word, but takes the place of such secondary meaning, which, in the case given, is not required to be established and evidence regarding which would be irrelevant, either to prove or disprove.

Upon the question of infringement between "Beats-All" and "Knox-All" the court entertained no doubt, declaring that there was no such limitation as the defendant claimed upon infringement, to-wit, that it must consist in similarity either to the eye or the ear. In this case the similarity is mainly one of ideas and the court cites the case of the trade marks "Keep-Clean" and "Sta-Kleen," as a case in point. Citation might also have been made of the trade mark "Unceda," held to have been infringed upon by the trade mark "Iwanta."

#### *Comment on the Trade Mark Law.*

Registration under the law of 1905 either of marks already registered or of marks not heretofore registered, though highly desirable, is not in any sense compulsory. The common law right of property in a trade mark gained by priority of use, is expressly preserved and may be enforced at law and in equity in the same manner and with the same effect as if this law had not been passed. Moreover, as to marks already registered under the old law, it is provided that the certificates shall remain in force for the period for which they were issued, thereby preserving such limited rights and advantages as are evidenced by those certificates. Marks already registered may, however, be registered under the new law, and thus secure the greater measure of protection which it affords.

The wisdom of securing this protection is shown by a consideration of the many and important advantages of the recent act.

As to marks already registered, the conspicuous advantages are four in number:

1st. It gives jurisdiction to the Federal courts of actions against infringers engaged in interstate commerce. Under the old act, these courts have jurisdiction only when the infringing mark is used in foreign commerce.

2nd. In any action for the infringement of a registered trade mark where the plaintiff prevails, he may in the discretion of the court recover damages in three times the amount of damages actually found to have been sustained.

3rd. An injunction obtained in a suit before the Federal courts may be served and enforced anywhere in the United States, instead of only within the circuit where it was issued as formerly.

4th. Infringing labels, or wrappers bearing marks found to infringe, may be ordered delivered up and destroyed.

5th. Registrations under the new law may be made in the exact form in which the mark is actually used. Formerly registration has been so restricted by the requirement that the "essential feature" be specified, that registration has seldom been obtainable in other than a mutilated form, from which the mark as actually used was often unrecognizable. By registration, the mark may be put upon the register in the form used, so that the examination which the Patent Office makes as a preliminary to subsequent registrations, will more accurately guard the registered mark against the registration of infringements.

Furthermore, registration in most foreign countries is obtainable by an American citizen only in the form in which it is granted him at home. Under the old law, the only registration he could obtain was in a form which often afforded him little or no protection when registered abroad. It may be important in many cases to re-register marks in the United States, in the form in which they are actually used for the purpose of registering them abroad in the same form. The desirability of so doing can be determined only by the facts of each case.

The advantages above enumerated apply equally, of course, to marks that have never been registered in the Patent Office. But there are additional reasons why these latter marks should now be placed upon the register. Marks used in interstate commerce are registrable under the law, instead of marks used only in foreign commerce, as formerly. Moreover, any mark that has been in actual and exclusive use as a trade mark for ten years past may be registered although not within the common law definition of a trade mark. This provision is intended to extend the protection of the law to any mark which by long continued and exclusive use has acquired a distinctive character as a designation of the goods of a particular maker, whether that mark at the time of its adoption was a good trade mark or not.

#### *Constitutionality of the Trade Mark Law, 1905.*

Upon an opposition to the registration of a trade mark, the opponent contended that the act was unconstitutional and offered that as a reason why the applicant's mark should be refused registration. In passing upon this contention, the court said:

"If the act is void it may be pertinently inquired—How can the opponent make use of the act for the purposes of opposition? A void act must be void as to the opponent no less than as to the applicant. It cannot be that an act utterly void because dealing with a subject-matter upon which the legislation had no right to speak, nevertheless provides the procedure upon which the opponent may challenge the validity of the act itself. The opponent has no standing whatever as a party to this proceeding except by the provisions of the very act which he says is entirely

void. Therefore, his objection, if true, cuts the ground from under his own feet."

The court further said that, assuming that the act was unconstitutional, an additional reason existed why the question could not be raised by the opponent, in that—under those circumstances, the registration of the mark would not in any way prejudice the latter's rights, for, if the act was unconstitutional, the registration would be void and no property right of the opponent could be thereby threatened, nor any cloud cast upon his title to his own mark by such registration.

### *Marks Simulating the Seal of The United States.*

Application was made for the registration of a trade mark described as follows:

"The trade mark of said corporation consists of the representation of an eagle with spread wings, perched upon the American shield, and holding in its exposed talons arrows and branches of laurel, there being in the background the representations of stars and the exposed ends of several American flags, the whole being enclosed within the concentric circles appearing within a seal-like border, and the words 'American Seal,' which appear in the upper portion of the seal-like border."

Registration was refused by the Commissioner upon the ground that the mark was a simulation of the coat of arms of the United States. Upon appeal the court held that the decision of the Commissioner was correct, although the mark was more a simulation of the seal of the Department of Justice than of the great seal of the United States, and the mark was refused. (*Re William Connors Paint Mfg. Co.*, 123 O. G., 999.)

Upon an application for the registration of a trade mark described as consisting of the words "New England," together with the representation of a spread eagle, holding in its talons arrows and an olive branch and having a shield upon its breast, the court said that the registration was properly refused. It was contended on the part of the applicant that Congress intended to recognize a vested right in persons who had already used such marks to continue to register them, and to prevent other citizens from registering other marks of the same class. The court, however, overruled the contention, saying that the law which prohibited the use of such simulations of the great seal of the United States was the law for all alike, and, while the court would be slow to interfere with property rights, no person could have, in the sense of the act, any right to the exclusive use of the seal of the government and could not, therefore, claim any prescriptive right to the use of a mark the use of which was prohibited by the law. (*Re American Glue Co.*, 123 O. G., 999.)

*The Use of the Red Cross As a Trade Mark.*

It is well known that by act of Congress of 1905, the use of the red cross for commercial purposes was prohibited, except as to those whose use thereof began prior to the date of passage of the act, and whose rights to continue in the use thereof are reserved by the provisions of the statute. In a suit brought by one who had made use of the red cross trade mark long prior to the year 1905, a variety of defenses was interposed. It was contended first, that the use of the mark was meant to indicate and did indicate to purchasers of the goods, that the Red Cross Society was in some way connected with, or concerned in the sale of the goods. The court said, however, that the commercial use of the symbol was too common to deceive the public in any such way as was claimed by the defendant. Doubtless it contains a suggestion that the goods were produced under sanitary conditions, or that they are clean, and free from contamination. Doubtless, also, the use of the mark is confined to articles to which the suggestion of cleanliness and sanitary conditions of production is appropriate. The growth of popular sentiment in favor of cleanliness as an aid to health, gives value to anything suggesting such conditions of manufacture. Merchants have taken advantage of this education of the public and have undoubtedly used the red cross to indicate that their wares are made under sanitary conditions. It is pretty clear that the symbol has been selected as a means of making this suggestion to the prospective purchaser. The suggestiveness of the mark, however, is far from making it descriptive. The use of the symbol has now become too common, to convey an impression that the society is in any way concerned in the manufacture of the goods, and the prevalence of such use was clearly recognized by Congress, when it permitted all those who had used the mark as a trade mark, prior to 1905, to continue in the use thereof.

It was further contended by the defendant that the addition to the symbol of the words "red cross brush" was a further means of deception and fraud, in that it induced a belief in the existence of some connection between the goods and the society.

The court, however, said that there was no more fraud in the use of the words than in the use of the symbol, since the one neither added to nor subtracted from the effect of the other.

The defendant maintained that, the use of the trade mark by the complainant having been confined during a long period of time to a single style and material of brush, the mark must be regarded not as a trade mark, but as a mere mark of quality, to distinguish that brush from the other brushes made by the complainant. The court said, however, that the question whether the mark was one of quality was to be determined by the manner in which the consuming public understood it. Certainly it could

not be supposed that a mark, intended and believed to express origin only, becomes any the less distinctive as a trade mark, because it is used on a portion of the maker's goods or on a single line thereof. If the complainant wished to push one particular brush, there is no reason why he should not put upon it his best trade mark and give it as much advertising as he deemed expedient. In short, the use of a mark on a limited class of trade marked goods does not necessarily make it a symbol of quality. Where the mark was not intended to indicate quality, but origin, there must be some affirmative proof that it had by use acquired a force other than that originally intended. The presumption is that it means to others what it was intended to mean. There have been cases where marks originally used to indicate quality or grade, have in time acquired an added significance of origin or make, and have so become entitled to protection as trade marks; but there are no cases where a mark, adopted and used as a trade mark, has come to be understood as a mark of quality, because limited in use to one kind of goods.

To the defense that the use of the red cross as a trade mark is against public policy, the court said there could be but one answer. Congress having definitely declared that it would permit the use of the marks by those who had used them prior to the year 1905, it has legalized the use of the symbol, and the question of public policy, which was one for the determination of Congress only, must now be considered as closed.

It was finally maintained that the complainant, having already two trade marks upon his brushes, could not lawfully add a third. The court expressed itself as being unable to see why it should not recognize any number of trade marks that were actually such. If a man can show that the public has in fact come to recognize each of six marks used together as separately indicating his manufacture, it should be no concern of the court to interfere, if the public has solved the difficulty of more than one mark, it would be officious for the court to forbid the maker to continue in the use of what the public already understands. In the case of the red cross, this was the most conspicuous of the three marks upon the article and therefore it could not but be presumed that it would serve as a mark of identification by purchasers thereof.

The court cites the cases of the Capewell Horsenail Company against Mooney as authority for the proposition that a manufacturer could have more than one trade mark for his goods. In that case, it is pointed out, the one mark was used on the nail and the other on the box, but that only made the probability



of confusion between the marks greater. If, therefore, such separate use of a plurality of marks is allowable, much more should it be permitted to use a number of marks in combination.

### *Descriptive Terms.*

The words "lait de violettes," for perfumery, and other toilet preparations, are descriptive of character or quality. The words, which translated mean "milk of violets," indicate that the goods contain, as an ingredient, a milk, juice or extract of violet. Whether, therefore, the extract or essence of violets actually enters into the composition of the goods, is immaterial, since the mark, if not descriptive of the character or ingredients of the goods, is deceptive and in neither case registrable. (Ex parte, Bagot & Co., 150 O. G., 1042.)

The word "cream" as applied to baking powder is not descriptive and is entitled to registration. In support of his opinion, the commissioner cites the fact that the validity of the mark has been twice declared in suits brought by the applicant against infringers in the United States circuit court. In one of these cases, the court said that the word does not describe an ingredient of the article, its quality, or kind. The baking powder is not composed, either in whole or in part, of cream, nor does that word convey the idea that it is the best or choicest. It is true the word is often used to designate the best part of a particular thing, but not the thing itself, and only in that relation has the word any descriptive force. *International Food Co. vs. Price Baking Powder Co.*, 150, O. G., 827.)

The word "fussy" is not registrable as a trade mark for candy, being a descriptive term, particularly where used in the phrase, "A fussy package for fastidious folk." The office of a trade mark is to indicate origin or ownership. To be registrable it must be so used as to signify the source or origin of the merchandise to which it is applied. As employed in the above phrase, however, it is only an adjective, qualifying the word "package." (Ex parte, Whitman & Son, 151, O. G., 193.)

The word "riteshape" for wooden dishes, is obviously descriptive, being a mere misspelling of the words "right" and "shape" and, therefore not registrable. (Ex parte, Sweers, 21 Gour. Wash. Dig., 93.)

Whether the words "easy day" as a trade mark for washing compounds, are descriptive or not, may be open to question. Where the record shows a prior registration of the same mark, an interference will be declared at the request of the applicant, who claims priority of use, any doubt as to the descriptive character of the mark being, in such a case, waived in his favor. (Ex parte, Hitchcock-Hill Co., 21 Gour. Wash., Dig., 95.)

The decision of the Commissioner, holding that the word

"oolitic" as applied to paint, is descriptive, indicating that the paint contains oolite, a granular form of limestone, has been accorded a rehearing and reversed. Upon affidavits that oolite had never been known as a filler for paint, and could not, in the opinion of those skilled in the art, be so used, it was held that "oolitic" was not descriptive of any ingredient or quality of the paint, but merely a fanciful term and properly registrable as a trade mark. (*Ex parte, A. Burdsal Co.*, 21 Gour., Wash., Dig., 94.)

#### *The Red Cross.*

A trade mark for cleansing compounds, composed of the word "rub-a-lac" arranged within the outline of a Greek cross, so as to read both vertically and horizontally, and printed in red, is such an imitation of the insignia of the American Red Cross as to fall within the prohibition of the act forbidding the use of the red cross for commercial purposes. (*Ex parte, Rub-a-lac Mfg. Co.*, 21 Gour., Wash., Dig., 93.)

#### *Name of a Patented Article.*

A name applied to a patented article during the lifetime of the patent can not be made the subject of registration as a trade mark, even before the expiration of the patent. This application of the doctrine of the *Singer Case* is not to be affected by the claim of the applicant, that he used the name for several years before the granting of the patent upon articles of similar character, but which it does not satisfactorily appear were any different from the patented article. (*Mathy vs. Republic Metal-ware Co.*, 21 Gour., Wash., Dig., 94.)

#### *Geographical Term.*

The words "American Lady" are not registrable as a trade mark, since the presence of the geographical term, "American," in the mark precludes its registration. In this decision the Commissioner followed the doctrine of the court of appeals of the District of Columbia, that a descriptive term, forming one feature of a trade mark, renders the mark as a whole unregistrable. (*Ex parte, Haas Lieber Grocery Co.*, 21 Gour., Wash., Dig., 94.)

#### *Conflicting Marks.*

There is no conflict in fact between two trade marks, one consisting of the picture of a swan, and the other of the words "swan's down." The Examiner of trade marks was of the opinion that the picture of a swan was the alternative of the word swan, and that the word "swan" is so similar to the words, "swan's down," that confusion might result from their contem-

poraneous use. The commissioner, however, says that the test of whether two marks, consisting respectively of a word and symbol, are alternatives or equivalents, is whether they would convey to the mind the same idea. Thus, it has been held that the word "star" and a picture of a star, the word "lion" and the picture of a lion are equivalents. The picture of a swan, however, and the words "swan's down" do not carry the same idea, the one conveying the idea of a bird whereas the other suggests an article, soft and fluffy. (*Price Co. vs. Church & Dwight Co.*, 150 O. G., 265.)

Registration of the word "Powellton" as a trade mark for coal is properly refused in view of the registration of the mark "Powell's Run," because the former so nearly resembles the registered mark as to be likely to cause confusion in the minds of the public. It was urged that no confusion had ever arisen between them, although in use for many years, and that the trade, which alone designates coal by name to indicate its origin, would not be confused by the similarity of the marks. Furthermore, that the owners of the registered mark had never complained, by legal action, of the applicant's use of its mark. These contentions were deemed, however, to be without force, it being well settled that trade marks are addressed to the general public and not merely to the trade. Furthermore, the fact that no suit had been brought to enjoin the use of the mark is immaterial on the question of registrability.

The application to register was made under the ten year clause, the mark being a geographical name, and it was held that, in view of the prior registration, the mark had not been in actual and exclusive use during the necessary ten-year period. (*Ex parte, Mount Carbon Co.*, 150, O. G., 828.)

#### *Names of Public Characters.*

The rule that the names of prominent public characters will not be registered under the trade mark law, received a new application in the rejection of the word mark "Bwano Tumbo" for games, toys and sporting goods. The commissioner held that he would take judicial notice of the fact that the name was applied to Ex-President Roosevelt and had come to be recognized as referring to him; that the designation was, therefore, within the rule that it was contrary to public policy, to encourage the use in trade of the name of a former president of the United States. (*Ex parte, Pearse & Todd*, 21 Gour., Wash., Dig., 92.)

#### *Parties to an Opposition.*

Where an opposition has been filed to the registration of a trade mark, application for which is pending, the fact that the mark applied for has been declared in interference with another

registered mark, is no reason for making the owner of the latter mark a party to the opposition, or compelling the opponent to litigate any question with him. Neither can the opponent be compelled to file an application for the registration of his mark, in order that he may be made a party to the interference. It might be desirable that the entire matter be settled in a single controversy, but there is no way of accomplishing that end. (In re Brittain Tobacco Works, 150, O. G., 1043.)

#### *The Ten-Year Clause.*

The fact that an application for the registration of a mark is made under the ten-year clause, does not preclude its registration as a technical trade mark, if the mark be registrable as such. In the case, therefore, of such a mark, thus applied for, its registrability is to be determined by the principles applicable to a technical trade mark. The applicant is not bound to establish actual and exclusive use for ten years preceding the passage of the act. Use of a conflicting mark, therefore, from a date later than the applicant's use of his mark, is no bar to registration. (International Food Co. vs. Price Baking Powder Co., 150, O. G., 827.)

#### *The Declaration.*

Where the facts are incorrectly stated, in a declaration forming part of an application for the registration of a trade mark, it is necessary that a new declaration be filed, since the patent office is without power to change or amend the declaration. The trade mark act requires that the declaration be verified and it can not be amended, except upon the oath of the applicant. (Ex parte, Felten Actien-Gesellschaft, 150, O. G., 569.)

#### *Interference—Res Adjudicata.*

Where, in a trade mark interference, a decision is rendered that neither party is entitled to register the mark, the question of the right to register is *res adjudicata*, as to any party that does not appeal from the decision and that party is not entitled to further consideration of the question in the Patent Office.

Although the decision in the interference proceeding held that the other party to the proceeding had never used the words as a trade mark, this will not help the applicant, since so far as he is concerned, the question of his right to register was finally settled by the interference. (Ex parte, Safety Remedy Co., 150, O. G., 266.)

#### *Grounds for Cancellation.*

In order to sustain a petition for the cancellation of a trade mark, it is necessary that the petition allege facts, such as will

show damage to the petitioner from the registration of the mark. Where, therefore, the mark sought to be cancelled is for canned fruits, canned vegetables, pork and beans, jam, preserves and marmalade, an allegation that the petitioner has a similar trade mark for coffee, prior in date of use to that sought to be cancelled, is immaterial. The mere fact that the goods for which the mark is registered and the goods on which the mark of the petitioner is used, are classified in the same class under the patent office classification as "foods and ingredients of foods," does not necessarily constitute them goods of the same descriptive properties.

This is so, notwithstanding the decision of the court of appeals in the Baker case, which held that cocoa and coffee were goods of the same descriptive properties. These latter articles are both adapted to similar use and are more nearly related than coffee and food products generally. (Fischer & Co. vs. Beckmann & Co., 149, O. G., 1120.)

#### *What Is Infringement of a Registered Trade Mark.*

The trade mark law of 1905, in defining what shall constitute infringement upon a trade mark registered under the act, says that any person who shall, without the consent of the owner, reproduce, counterfeit, copy, or colorably imitate, such trade mark, and affix the same to merchandise of the like descriptive properties as those of the owner of the mark, or to labels, signs, prints, packages, wrappers or receptacles intended to be used upon or in connection with the sale of such merchandise, shall be liable for damages at the suit of the owner of the mark.

In the circuit court of appeals for the eighth circuit, the question has just been raised, whether the use of the trade mark registered by another for whiskey, upon a sign placed before a saloon, was an infringement upon the registered mark. The mark consisted of the figures "905." The defendant was formerly a stockholder and officer of the complainant company, but having disposed of his stock, started a saloon of his own, placing upon his sign his name, "A. Diederich," followed by the words "Originator of 905." The opinion of the majority of the court appears to have strangely misunderstood the language of the statute. The court rightly states that a trade mark, both at common law and under the present statute, is a mark used upon goods to indicate their origin, and that no mark not actually applied to the goods or to the receptacle or package containing them, in such a way as to accompany the goods into the hands of the purchaser, can be a trade mark.

From this the court concludes that the complainant could have no trade mark in a sign placed on a building, containing the figures "905," and if the complainant could have no trade mark

in such a sign, the court said it was unable to perceive how a sign of that character placed by the defendant upon his building, could be an infringement upon the complainant's trade mark, since it is self-evident that what is not a trade mark is not and can not be infringed as a trade mark. The sufficient answer to this argument is, that what is a trade mark may, under the statute, be infringed by what is not. The dissenting opinion of Judge Sanborn contains the sounder view, to wit, that a mark to be registered and protected must be a trade mark, as defined by the opinion of the majority of the court, a mark applied to the goods themselves to indicate their origin; nevertheless, the question was not whether the figures "905" upon the building constituted a trade mark, but merely whether under the statute they constituted an infringement of a trade mark, the validity of which was not in question. The statute provides that a registered trade mark is infringed by the unauthorized application thereof to a sign used in connection with the sale of other goods and the facts very clearly bring the present case within that provision of the law.

The majority of the court said that the word "signs" in the statute must be understood to mean some symbol or emblem in the nature of a trade mark affixed to goods. A reference, however, to the language of the statute shows that this construction of it is absurd and that the word "signs" therein is clearly intended to refer, like the word "prints" to an advertisement of some character or other, not to be placed upon the goods but to be used in connection with the sale thereof. This is all the more clear from a comparison of the law of 1881 with that of 1905. Under the law of 1881, infringement was so defined as to require that the imitation be affixed to merchandise. Under the law of 1905, after the provision regarding the affixing of the imitation to merchandise, were added the words "or to labels, signs, prints, packages, wrappers or receptacles intended to be used upon or in connection with the sale of merchandise." It is clear that the additional words must have been intended to add something to the law, and yet, as construed by the majority of the court, they make the statute precisely equivalent to that of 1881.

There is no doubt, therefore, that the majority of the circuit court of appeals was at fault in this, the first decision so far as we know, construing this provision of the law, and that a complete case of infringement under the statute is made out when it is shown that the registered trade mark of another has been used upon a sign, for the purpose of indicating the sale of merchandise other than that of the owner of the mark!

(Diederich vs. W. Snyder Wholesale Wine & Liquor Co., 195 Fed. Rep., 35.)

## URUGUAY

The Republic of Uruguay is situated at the most southern part of Brazil, at the inlet of the Rio de la Plata, bounded on the west by the Argentine Republic, from which it is separated by the river Uruguay, on the north and northeast by Brazil, on the south by the Rio de la Plata, and on the east by the Atlantic. The area of this Republic is stated at about 72,000 English square miles. The population is estimated at 1,095,700.

The chief industry of the country consists in the rearing of cattle, horses and sheep and the growing of cereals, also to some small extent of tobacco, olives and grapes. Enormous quantities of cattle are annually slaughtered for their hides and tallow.

One of the most important establishments in the Republic is the one situated at Fray Bentos on the banks of the river Uruguay, where the famous "Liebig's Extract of Meat" is made. Another important industry is the export of meat in a frozen state, which under the present Directorate promises to prove another outlet for the surplus stock of cattle and sheep of this country.

The most important industry of the country, however, of Uruguay is that of the beef salting establishment (Saladeros), and which give the principal percentage of the exports in the shape of "Charque," bone ash, bones, etc., to the amount of 93.53 per cent. of the whole exports of the country.

MONEY—The peso (100 centavos)=4s. (nominal value)=96 cents U. S.

WEIGHTS AND MEASURES—The metric system.

*Law.*

Law of July 17th, 1909.

*Term.*

The protection granted by registration of a mark extends over a period of ten years, which term can always be prorogated for a like period at the end of ten years or when they are about to lapse. (Art. 12.)

*What May Be Registered.*

The names of objects or persons in a particular form, symbols, monograms, engravings or embossings, stamps, vignettes and reliefs, fringes, fanciful words or names, letters or numbers combined in a special design, the wrappers or covers of articles, and any other sign by which it is desired to distinguish man-

ufactured and commercial articles or the products of agricultural, extractive, forestal and live stock industries, may be used as marks. (Art. 1.)

#### *What May Not Be Registered.*

According to this Act, the following may not be used as marks:

1. The letters, words, names, escutcheons or distinctive signs that are or may be used by state and municipal authorities.
2. The form given to the products, except when more useful or convenient than any other for the kind of commerce or industry to which it is applied.
3. The color of the article or of the wrapping; but combinations of colors on wrappings may be used as a mark.
4. Technical, commercial or ordinary names used to express qualities or attributes of the goods.
5. Terms or phrases which have passed into general use, and signs which are not fanciful—that is to say, which do not present any novel or special character.
6. The designations usually employed to indicate the nature of the article, or the class, kind or category to which they belong.
7. Drawings or phrases of an immoral character.
8. Caricatures, portraits, drawings or phrases ridiculing ideas, persons or objects worthy of respect.
9. The names or portraits of living persons, unless their consent has been obtained; and those of deceased persons, unless with the consent of their relatives within the fourth degree of consanguinity and second of affinity.
10. The letters, words, names, escutcheons or distinctive signs used by foreign states, unless evidence is produced by certificate issued by the proper authorities of the state in question to the effect that the applicant has been duly authorized to make commercial use of the same.
11. Words similar to a commercial name or a name known in relation to certain articles. (Art. 3.)

#### *Mode of Application.*

Those desirous of obtaining property in a trade mark must apply for the same to the Ministry of Industries, presenting proof that they are engaged in commerce or industry. For this the presentation of their trade license (*patente de gro*) will always be sufficient. For the registration of foreign marks there must be produced the certificate of registration in the country of origin or satisfactory evidence that may allow the applicants to take advantage of the preceding paragraph. (Art. 15.)



The application for registration of a mark must also be accompanied by—

1. Three copies of the mark proposed to be used or for which application is made.

2. A specification in duplicate of the mark in case of figures or emblems, likewise stating the class of objects for which it is intended, and if it is to be applied to products of a factory or of the earth, or to goods of a certain trade.

3. The receipt of the State Treasury, proving that the legal fees have been paid.

4. A power of attorney, duly legalized if issued abroad. (Art. 16.)

In the application or in the description shall be stated a list of the articles which the mark is to distinguish, in accordance with the classification. (Same as in Argentine.)

In the application shall be stated the serial number belonging to the categories and classes enumerated; and it shall be drawn up on the proper stamped paper, in plain characters, any amendments, interlineations and erasures which it may have being authenticated by the signature of the applicant.

When the mark is to distinguish a single article, mention of the same and of the class or category in which it is included will suffice.

The parties interested shall also be obliged to deposit the stamped paper necessary for the decrees which are issued, which, however, may be issued on ordinary numbered paper, but they shall not be transmitted to the interested party nor considered completed until such deposit has been effected.

The three facsimiles of the mark, which, according to paragraph 1 of Article 16 of the law, must accompany the application, shall be printed in one color only.

The electrotype required shall be made of metal or wood, in such condition as to permit a clear impression of the mark, and its dimensions shall be 12 cm. long by 6 cm. wide.

There shall be exempted from the obligation of presenting the electrotype, registrants of those marks consisting of mere fanciful designations devoid of designs or special characters.

The said documents having been copied, the Chief of the Section shall arrange for the publication.

Compliance with the requirement for publication shall be proved by the addition to the file by the Office of first and last numbers of the *Diario Oficial* containing same, for which the interested party shall pay the sum of six pesos.

Oppositions to the registration of trade marks as also actions for annulment, legislation in regard to which is contained in Art. 2 of the law shall be instituted before the Section referred to.

The latter shall be limited to depositing proof of the pre-

sentation of the petition, and to submitting same to the Ministry with a report, adding thereto all the particulars which are in its possession.

The file having been submitted, opportunity to examine the same shall be given to the opponent, which examination shall be concluded within ten days.

Whether or not this examination has been concluded the case shall be ready for decision, if there are no facts to be proven.

If evidence is to be produced in each case a term shall be set which shall not exceed fifteen days for the Department of the Capital, thirty days when it must be produced outside of the Department of the Capital, but within the Republic.

If the evidence has to be produced from abroad, the term shall be ninety days.

Every final decision, whether incidental or originating from an ordinary proceeding, which is pronounced relative to marks, shall be announced in the *Diario Oficial*, without such announcement being a bar to its publication in full when it may be considered necessary.

This announcement shall be considered sufficient notification to the interested party, and the periods shall commence to run from the day following the said announcement.

This provision, as also that contained in Art. 13, shall be understood to be without prejudice to the decrees, which, to thoroughly elucidate the matter, it is believed should in some cases be issued, or to the personal notifications which are deemed proper.

Documents emanating from foreign authorities should be presented bearing the signature of an authorized official legalized by the legation or consulate of the Republic in the country of its origin, and that of the Consul or Minister legalized by the Ministry of Foreign Relations.

In order that foreign marks may enjoy the guarantees which this law accords, they must be registered in accordance with its provisions.

The owners of them or their duly authorized agents are the only ones who can apply for registration.

#### *Documents Required.*

Power of attorney, legalized by Uruguayan Consul; certified copy of original registered mark in the country where the proprietor of the mark is established, legalized by the Uruguayan Consul; ten copies of the mark.

#### *Assignments.*

The cession or sale of a business includes the mark, save express stipulation to the contrary, and the cessionaire has the right

to use the mark, even if it be nominal, in the same manner as the previous owner, without other limitations than those expressed in the agreement, deed of sale or deed of cession or surrender. (Art. 8.)

Applications for the registration of an assignment of a mark shall contain:

- (a) The name and address of the assignor.
- (b) The name and address of the assignee.
- (c) The number and title of the mark.
- (d) Proof of there having been deposited in the General Treasury the fee prescribed by law.
- (e) The original document, or a copy of same, proving the assignment.

#### *Fees.*

For the registration and certificate of the mark, whencesoever its origin, a fee of \$10 shall be levied. The same fee shall be paid for registration and certificate of transfer. For copies of certificates required thereafter the charge shall be \$2, besides the value of the stamped paper on which they are issued. For the registration and certificate of renewal of a mark a fee of \$25 shall be levied. (Art. 26.)

#### *Manufacturing, Commercial and Agricultural Names.*

The name of a merchant or manufacturer, or of a firm, or the title or designation of a house or establishment which deals in determined articles, constitute industrial property for the purposes of this law. (Art. 28.)

If a merchant or manufacturer desires to engage in an industry already carried on by another person of the same name or with the same conventional designation, he shall adopt a clear modification which shall make this name or designation visibly different from that which the pre-existing house uses. (Art. 29.)

If the party injured by the use of a name of manufacture or commerce, or of the mining, agricultural or lumbering industries, does not make any complaint within the term of two years from the day on which it began to be used by another, he shall lose his right to any action. (Art. 30.)

Corporations have the same right to the name which they bear as any individual, and are subject to the same limitations. (Art. 31.)

The right to the exclusive use of a name as industrial property shall terminate with the house of business which bears it or with the cessation of the industry to which it belongs. (Art. 32.)

The registration of a name is not necessary in order to exer-

cise the rights accorded by this law, except in case it forms a part of the mark. (Art. 33.)

#### *Penal Provisions.*

He who for the purpose of gain makes, counterfeits, alters or executes a mark registered by another person in the proper register, shall, upon complaint, be punished by imprisonment of from twelve to fifteen months. (Art. 34.)

He who with the same motive imitates a mark under such conditions that the consumer could confuse same with products, the marks of which have been duly registered, shall, upon complaint, be punished by imprisonment of from nine to twelve months. (Art. 35.)

Those who refill with spurious products receptacles bearing the mark of another, or those who refill them with products which do not correspond to the genuine product mentioned in the mark which the receptacle bears, or those who mix genuine products with others extracted or spurious, shall be punished upon complaint, with imprisonment from six to nine months. (Art. 36.)

He who knowingly sells or places on sale, or offers to sell or distribute merchandise marked with the marks to which the preceding article refers, shall be punished upon complaint, with imprisonment of from six to nine months. (Art. 37.)

Those, who against the wish of the legitimate owner, use or place genuine marks on sale, shall be punished, upon complaint, by a fine of from one hundred to two hundred pesos. (Art. 38.)

Those who sell or place on sale merchandise with a misappropriate or counterfeit mark are obliged to give to the merchant or manufacturer who is the owner of them complete information in writing in regard to the name and address of those from whom the merchandise has been purchased or procured, also in regard to the time when the sale commenced, and in case of refusal they may be legally compelled under penalty of being considered accomplices of the guilty party. (Art. 39.)

Merchandise bearing counterfeited mark which is found in the possession of the counterfeiter or his agents, shall be confiscated and sold, and the proceeds, after the expenses and indemnities established by this law have been paid, shall be appropriated to the benefit of the public schools of the Department in which the confiscation took place. (Art. 40.)

Counterfeit marks which are found in possession of the counterfeiter or his agents shall be destroyed, as also the instruments which served especially for the counterfeiting. (Art. 41.)

Those injured through the violation of the provisions of this law may bring an action for damages against the authors of the fraud and their accomplices.

The sentence shall be published at the expense of the infringer. (Art. 42.)

No action, civil or criminal, may be brought after three years have elapsed since the commission or repetition of the offense, or after one year from the day on which the owner of the mark had cognizance of the fact for the first time. The acts which disturb this provision are those which are determined by the common law. (Art. 43.)

The provisions contained in the Articles of this Chapter shall be applicable to those who unlawfully make use of the name of a merchant, manufacturer, or of a firm, of the sign or designation of a commercial or manufacturing house, as established in Articles 28, 29, 30, 31, 32 and 33 of this law. (Art. 44.)

The provisions contained in the penal code shall be applicable to the offenses to which this law refers, provided that they do not conflict with what is expressly established by this law. (Art. 45.)

#### *Procedure.*

Every owner of a manufacturing, commercial or agricultural mark to whose knowledge it may come that there are to be found in the custom house, postoffice, or other government or private office, labels, capsules, receptacles or any other article similar to those which constitute or belong to his mark, may apply to the competent authority, asking for an attachment on the said articles, and the court shall grant the request on the responsibility of the petitioner and such security as he shall deem necessary in case the attachment should have been granted wrongfully.

It is optional with the judge to dispense with the security when the applicant is a person of well known responsibility. (Art. 46.)

Without prejudice to what is laid down in the preceding article of this law and other measures which may be taken in the criminal court, the owners of the misappropriated, counterfeited or imitated marks may, upon their own responsibility, apply to the competent judges, asking that an inventory and description be taken of the merchandise or products which are found bearing said marks, in a house of business or any other place. The said inventory shall be taken by the constable of the court or by any public notary whom the court shall name, by drawing up documents which shall contain a detailed description of the merchandise or products, and which shall be signed by the petitioner if he be present, the constable or notary, as the case may be, and by the proprietor of the business or store, or in his absence, by two witnesses. (Art. 47.)

When several inventories have to be made, simultaneously in different places the judge may appoint for this purpose any pub-

lic notary and in all cases direct, if he shall believe it necessary, that there shall accompany the constable, or his substitute, an expert, in order that he may supervise the description of the inventoried merchandise. (Art. 48.)

If, during the taking of the inventory, the explanations provided for by Art. 39 of this law are given, they shall be included in the document. (Art. 49.)

In order that the order for the inventory and attachment of which the preceding articles treat may be given, the presentation of the certificate of the mark is required. (Art. 50.)

Fifteen days having elapsed from the effecting of the attachment, the same shall be without effect if the owner of the mark has not instituted the proper action. (Art. 51.)

The proceedings to which the offenses named in Art. 34, and those following of this law give rise, shall be conducted according to the procedure laid down by the code of criminal procedure. (Art. 52.)

Criminal actions may not be officially instituted, and belong solely to the interested parties, but once initiated they shall be continued by the Government Attorney if he thinks it proper. (Art. 53.)

The parties injured by violation of the provisions of this law may bring an action for damages against the authors and accomplices of the fraud.

The sentences shall be published at the expense of the infringer. (Art. 54.)

#### *Classification.*

Same as in Argentine.

#### *Law in Force in Uruguay to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No legislation is in force prohibiting false indications of origin nor are importers held legally responsible for the correctness of indications of origin on imported goods. It is thought, however, that if a merchant sold goods falsely marked as of U. S. origin, the purchaser could claim damages under the Civil Code. The legal procedure would be expensive and protracted.

Marking Goods: "Marca de Fabrica," (M. F.); and "Marca de Comercio," (M. C.)

#### *Trade Mark Law.*

Under date of July 13, 1909, a new trade mark statute was enacted by the Congress of Uruguay which has now become operative there. This statute makes important changes in the trade mark law of that Republic.

The law excludes from registration the names or coats of

arms in use by the state or any municipality, names and coats of arms of foreign countries, unless authorized, the form or color of the articles, descriptive terms, terms in common use as applied to the articles, marks which tend to ridicule ideas, persons, or objects worthy of respect, names of living persons without their consent or of deceased persons without the consent of their next of kin, words similar to a commercial name known in connection with the same products, and words which indicate an intention to unfairly compete with any existing business. The exclusive right to the use of a mark and the right to punish the use thereof by another is dependent upon registration. However, prior use of a mark, whether foreign or domestic, within the country is sufficient to sustain an opposition to the registration of the mark by another, or to justify the cancellation of such unauthorized registration if effected. A proceeding for cancellation must, however, be brought within two years, after which time the registration becomes conclusive. The term of registration is ten years. If a mark be allowed to lapse, it can be re-registered within two years of its expiration only by the original registrant or by his legal representatives.

The application for registration is published in the official daily paper for fifteen consecutive days and when ten days shall have elapsed after the last publication, if no opposition is filed, the mark is passed to registration.

Commercial names, names of houses, firms or establishments are protected without registration and another person of the same name desiring to carry on business must use his name with such modification as will make it visibly distinct from that of the previous user. Any complaint upon this score, however, must be made by the party wronged within two years, otherwise his right is barred. The names of corporations are protected in the same way as those of individuals.

Counterfeiting of a registered trade mark is punished by imprisonment of from twelve to fifteen months. The refilling with spurious goods of receptacles bearing trade marks, or the adulteration of goods sold under trade marks, is punishable by imprisonment of from six to nine months. The sale of such goods with knowledge of their character is similarly punished.

Merchandise bearing counterfeit marks is subject to be confiscated and sold for the benefit of the public schools of the department where found.

Any action, civil or criminal, must be brought within three years after the commission of the offense, or within one year from the time that it becomes known to the party wronged.

Criminal proceedings must be instituted by the party wronged and will not be undertaken officially, but once initiated they may be continued by the government prosecutor.

*The Status of Trade Marks.*

The reports of the Chamber of Commerce of Montevideo for the years 1909 and 1910, show several cases of a notable character. Application being made for the registration of a trade mark consisting of the figure of a crescent, the word "Crescent" and the representation of several stars, an opposition was filed by a firm of earlier registrants who maintained that the mark applied for would be confused with their own already registered, and described as consisting of the representation of one or several stars, shown in any form which they might desire to adopt. The Chamber of Commerce advises that the registration in question, conceding to the firm the right to use their mark in the form of a single star, or of several stars, with or without additional symbols, as they might see fit, is not in accordance with the terms of the law, because the law requires the deposit in the registration office of a representation of the mark as used. This representation is intended for purposes of evidence, in controversies over the right to the mark, and the registration should be limited to the mark as used and should be in accordance with the representation of the mark filed in the office. No right should be conceded to use the mark with additions or modifications that may suit the convenience of the registrant, but any substantial modification of form made in the use of a registered mark should be considered as depriving it of the protection of the law.

In the present case, the Chamber of Commerce was, however, of the opinion that no confusion could arise between the mark applied for, in which the crescent and the name "Crescent" were the prominent features, and the mark of the opponent. This view was adopted by the department, which dismissed the opposition and granted registration of the applicant's mark. (MacGregor, Aitken & Co. vs. Ashworth & Co., Annual Report of the Chamber of Commerce, Montevideo, 1910, p. 26.)

An application of the Borden's Condensed Milk Co., for the registration of its "Eagle" trade mark in Uruguay, was opposed by a local dealer who had, some thirty years back, registered a like trade mark for foods and beverages and other articles. In considering the case, the Chamber of Commerce was evidently largely influenced by the fact that no condensed milk under the trade mark of the local dealer was now on the market and the opposition seemed intended rather to prevent the registration by the Borden Company than to avoid confusion between the opponent's goods and those of the applicant.

The discussion of this case develops the difference between a mark of manufacture (*marca de fabrica*) and a mark of commerce (*marca de comercio*) as usually recognized in the laws and practice of the Spanish-American countries. The distinction



between a mark of manufacture and a mark of commerce, is thus defined: the former is applied to the article by the maker, while the latter is applied by the dealer who handles the article. Accordingly, one product may bear both the mark of the manufacturer and that of the dealer, the latter being in the nature of a new mark or countersign added to the original mark, whereby the dealer himself guarantees the authenticity and quality of the product he sells.

The condensed milk of the applicant is a foreign product. It comes upon the market bearing an insignia of origin, to which the dealer may add a mark of his own. The consumer will be guided by the trade mark upon the goods, but will buy the product in the establishment whose commercial mark gives him confidence that the article is genuine. Consequently, no damage can result to the opposing dealer from the registration sought, because the presence of his commercial mark upon another brand of condensed milk would not cause it to be taken for the Borden brand, and if it did the dealer could not be damaged. By decree of May 10, 1910, the registration was ordered to proceed. (*Borden's Condensed Milk Co., vs. Puga*, Report, 1910, p. 28.)

That clause of the present trade mark law of Uruguay making the rights of the prior user subordinate to those of the registrant, after the expiration of two years from the date of registration of the trade marks, has received a construction from the Chamber of Commerce, that has been sanctioned by the action of the government. The firm of Martin & Co. registered the trade mark "Dulcuria" on October 3, 1907. Recently a Chilian house applied for the registration of the same mark, which was opposed. Thereupon the Chilian house, in its turn, sought to procure the cancellation of the mark registered, upon the ground of priority of use. It was claimed that although the mark had stood on the register for more than two years, the provision of the law affixing a two year period of limitation did not have a retroactive effect, and inasmuch as two years had not elapsed since the law went into effect, the right to cancel the mark had not been lost. This position, although it appears to be a very reasonable one, did not commend itself to the Chamber of Commerce, nor to the government, who were of the opinion that the right to cancel the registered mark had been lost by the lapse of the period fixed by the statute. The effect of such a principle manifestly is, that any trade mark registered more than two years before the act was passed, however, open to attack before, became by the passage of the act invulnerable. (*Weir Scott & Co. vs. Martin & Co.*, Report, 1910, p. 31.)

A mark consisting of a single triangle is held not to conflict in any way with another trade mark consisting of two triangles, so placed, one upon the other, as to form a six-pointed star. The opinion of the Chamber points out that when words or

names are in question, they should be so dissimilar in sound and significance that a purchaser who is unable to read could, nevertheless, distinguish them one from the other; but in the case of geometrical figures which could be readily recognized by anyone, the mere presence of the triangle in the two did not constitute them infringements one of the other.

It was argued in this case that since, according to the law of Uruguay, a mark to be valid must be of a novel and fanciful character, the mark applied for, the representation of a six-pointed star, would not be a good trade mark. The Chamber of Commerce, however, points out that absolute novelty is not required, but only novelty in respect of the goods to which the mark is applied. Hence, the commonest names or devices may form trade marks. The only novelty necessary is that they be not previously used as trade marks in the same industry. (*Brandes & Co. vs. Clericetti Bros. & Barella*, Report, 1910, p. 33.)

A Spanish firm undertook to procure the registration of its trade mark upon presentation of a certificate showing that they were established in business in a city of Spain, but offered no proof of registration of the mark in Spain. The Chamber of Commerce says that under the law of Uruguay this is not permitted. The law requires the certificate of registration in the country of origin as evidence of ownership of the mark, and this requirement can not be dispensed with.

It was argued that a foreign house might wish to register a mark for the Uruguay trade, without intending to use it at home, and, therefore, registration at home should not be required. The Chamber of Commerce, however, is of the opinion that even in such a case, the mark should be registered at home, since the protection accorded to a foreign trade mark in Uruguay is nothing more than the extension of the protection granted at home, and the foreign applicant, as a condition of registration will be required to show that his mark is in fact protected in his own country. (*In re Commellas & Cluett*, Report, 1910, p. 36.)

An application was made to register a trade mark, consisting of the words "Crema Helada," or "Ice Cream," for goods in several different classes, including pharmaceutical and toilet preparations. The registry officer refused to register the mark, considering that it was not properly registrable for goods of this character, but as so applied was an absurdity. The Chamber of Commerce points out that the apparent absurdity of the mark is the thing which makes it a fanciful mark, and, therefore, a good trade mark and that there is no reason why a single mark should not serve to distinguish any number of different products, however diverse in character. The only purpose of a trade mark is to distinguish the article to which it is applied from other

articles of different origin, and this purpose is best accomplished by a mark that is fanciful and arbitrary. (Re O'Shanahan & Co., Report, 1910, p. 39.)

The widow of one Francisco Bech, who by her remarriage had acquired the name of Casabo, registered in 1909, the name "Bech" as a trade mark for cigarette papers. Thereafter, one Jaime Bech applied for the registration of his full name for the same goods. This was opposed by the first registrant, she claiming that by registering the name "Bech" she had acquired a right to the exclusive use thereof. The applicant on the other hand, sought the cancellation of the registration made by the widow, maintaining that, having remarried, she no longer enjoyed the right to use the name. The Chamber of Commerce argued that, so far as concerns the rights of the widow, the use of the trade name is a necessary incident of succession to ownership of the business. When a commercial name forms part of a mark and indicates a place of business, this can pass by succession and the one acquiring the business acquires the right to use the commercial name. However, she should not be allowed to use the name of her husband, except with the prefix of his first name, Francisco, and the Chamber recommends that the mark registered should be amended in that particular.

As to the application of the later party, it is pointed out that the registration should be allowed, since the mark is different from the one already registered, except for the common presence therein of the name "Bech," and consists only of the applicant's name.

The decree of the Minister of Industry, of March 13, 1911, admits to registration the mark applied for, but directs the cancellation of the opponent's mark, because not the name of the applicant, and not otherwise entitled to registration under the trade mark act. (Maria de Casabo vs. Jaime Bech, Report, 1910, p. 43.)

That in the case of two marks, dissimilar in appearance and makeup, but embodying the same or similar names, the resemblance in the names is sufficient to cause a conflict between the marks, is pointed out in another opinion of the Chamber of Commerce. The two marks or labels in controversy contained, respectively, the designation "Pajarito" and "La Pajarita." It would be easy, it is said, for these to be confused by the public, since the words would give the common designation to the product in either case, and the difference between them, being merely the difference between the masculine and feminine forms of the noun, would be insufficient to distinguish them. This view was accented by the minister of industry and registration of the latter mark refused by decree of Feb. 11, 1911. (Reim & Co. vs. Carlisle Croker & Co., Report, 1910, p. 45.)

The proprietor of a drug store, who uses the representation

of a lion as a trade name or sign for his business, can not oppose the registration of the like symbol as a trade mark for pharmaceutical products. In an opinion rendered upon this question, the Chamber of Commerce maintains that pharmaceutical products manufactured and sold under the mark applied for, could not possibly be confused with similar products, sold from the place of business of the opponent. The use of a trade mark and that of a mere sign are quite different, the one being intended to distinguish the products of an industry or objects of commerce, while the other is meant merely to identify a place of business. The title to the latter is acquired by use, without the necessity of registration, whereas the former must be registered in order that the full title thereto may be vested in the user. The right to a trade mark is absolute throughout the entire country, while that to a sign is limited to the city or district where it is used and in which the trade connected therewith is located. (*Sueiro vs. Lucius & Bruning*, Report, 1909, p. 65.)

The word "Tubular," is not properly registrable as a trade mark for machinery, for the reason that it is a generic term, and no word denoting quality, class, form, color, number, description, origin or constituents of a thing can serve as a trade mark. (*Re Cooper*, 1909, p. 70.)

A mark for mineral water having been registered, consisting of the words "Carbri Roa," applied to a natural water of Spain, a later application for the same mark for beverages, waters and effervescent waters, with the exceptions of mineral waters, should not be allowed. The question is, whether registration of a mark should be allowed to distinguish an artificial product, after the registration of a like mark for a natural product of the same character.

It is pointed out that the laws of most countries give an exclusive right of property in the name of a mineral spring, to the owner thereof and an exclusive right to owners of springs located in a particular locality to make use of the name of that locality. Only the owner of such a spring should have authority to use the name as a trade mark for artificial waters. To allow the registration of the mark applied for would make easy confusion of the products, to the prejudice of the consumer and the owner of the registered mark. The minister of industry, by decree of June 18, 1909, refused the registration. (*Barbon vs. Echegaray*, Report, 1909, p. 72.)

Application being made by a firm in Buenos Aires, for the registration of the word "Continental," to distinguish a variety of articles among others typewriters, a local firm dealing in a machine of foreign origin under that name, opposed the registration, in so far as it related to typewriters. The Chamber of Commerce says that the name "Continental" although it has not been registered by the foreign house, the owner of the mark, who

has apparently been remiss and indifferent in the matter, is, nevertheless, known in the community as a foreign mark. It distinguishes a certain typewriter, and nobody should be allowed to register it, except the maker thereof. The right of property in a foreign trade mark is as much entitled to consideration as that in a domestic mark. The opinion was rendered, therefore, that the mark should not be registered for typewriters, but the government, taking the contrary view, permitted the registration for all the goods in connection with which the application was made. (*Berger & Co. vs. Coates & Co.*, 1909, p. 75.)

The title to a trade mark registered under the law of Uruguay continues throughout the period for which registration is made, irrespective of whether or not the use of the mark continues. This is the view of the Chamber of Commerce, in a case arising from the attempt of an applicant to show abandonment of a previously registered trade mark. It was in evidence that the registrant of the earlier mark was out of business and could not be located. Nevertheless, the Chamber of Commerce advised that only the expiration of the period of registration and the failure to renew could divest the registrant of the title to the mark. (*Bayley & Co. vs. Escudero*, 1909, p. 90.)

With respect to an application made by the British minister for an extension of time to British subjects to oppose applications for registration of trade marks under the law of Uruguay, the Chamber of Commerce points out that even if the statutory period allowed for oppositions is very short, and much less than under the laws of some other countries, still the British owners of trade marks interested are not, in reality, prejudiced because the statute gives to them the period of two years within which they may bring proceedings for cancellation of a registered trade mark and this proceeding is quite similar in the evidence required and in the expense involved, to the proceeding of opposition. Hence, no apparently sufficient reason exists for granting the extension of time requested. (Report, 1909, p. 92.)

While the form of a receptacle can not in itself properly constitute a trade mark, nevertheless taken in connection with other elements, as, for example, labels used thereon, a good trade mark may result. The registration of a mark so constituted does not concede to the firm mentioned the exclusive right to use such a receptacle, but only to use it in connection with the other elements forming part of the mark. (*Re Bagley & Co., Ltd.*, Decree, Nov. 26, 1910.)

Two marks are not necessarily in conflict because they contain a single common element. Application being made for the registration of a mark consisting of a shield, having in the center the letter S and above it an eagle in the act of flying, opposition was filed by the owner of another mark, embodying among other things the representation of an eagle. It was held by the

minister of industry, by decree of May 14, 1910, that the presence of a common element in the two marks is not enough to prevent the registration sought, taken in connection with the fact that the differences between the two marks as a whole, are such as to avoid any possibility of confusion between them. (Alcock & Co. vs. Clausen & Co., Decree, May 14, 1910.)

An application was made for the registration of a trade mark for anises, consisting of a certain form of bottle in which they were placed upon the market. The applicant represented that he wished to use different labels upon the bottle, without registering each label the bottle bore, and considered it more economical and practical to register the bottle. The Chamber advises that it be not registered, because it is not in any way new or unusual in form, apparently not having arrived at the opinion, which it adopted a year later, that such a trade mark was not properly registrable in any case. (Re Bosch & Costa, Report, 1910, p. 85.)

Application was made for the registration of a trade mark for certain textiles, consisting of the representation of an electric cutting machine. The Registrar rejected the mark, believing that no exclusive right should be given to use as a trade mark the representation of a machine employed for the production of the article to which the mark is applied. The Chamber of Commerce, however, points out that the Registrar is in error. It is true that the representation of a bottle or other container can not serve as a trade mark for the contents thereof, nor could the representation of a machine serve as a trade mark for the machine itself. Thus the manufacturer of sewing machines could not adopt as a trade mark the representation of a sewing machine, because the mark, in that case, would be in the nature of the necessary or generic name of the article, graphically represented. On the other hand, that mark might be a perfectly valid trade mark for goods in another and different line, because, as so used, it would be distinctive. Under the circumstances, the mark applied for was, in the opinion of the Chamber of Commerce, properly registrable. (Re Tusso & Co., Report, 1910, p. 41.)

The arms of a foreign state may not be registered. Therefore, a mark showing the representation of a double eagle, a part of the Austrian coat of arms, cannot be registered without proof that the use thereof is authorized by the state interested. (Re Bendorp & Co., Decree, February 4, 1911.)

The inscription "Honi Soit Qui Mal y Pense" appearing upon the coat of arms of Great Britain may not be made part of a registered trade mark without proof of the right derived from the British government to use the inscription in question. (Barclay & Co. vs. Iriart, Decree, February 18, 1911.)

## VENEZUELA

This Republic is situated at the extreme north of the South American continent, being bounded on the north by the Caribbean Sea and the Atlantic Ocean, on the south by the Republic of Brazil, on the west by Colombia, and on the east by British Guiana. The area is about 364,000 square miles and the population is estimated at about 2,685,700.

The size and natural wealth of Venezuela are not generally realized. Its greatest length is calculated as being nearly 1,000 miles and its greatest width about 800 miles. Its coast line is estimated at about 2,000 miles, with numerous harbors. Much of its area is cultivatable land, and parts of it are extraordinarily fertile.

Venezuela is probably the richest Republic of South America as regards natural resources and the easy means of developing them, being traversed in every direction by rivers, tributaries of the Orinoco, which connect it with the Amazon. The country is principally agricultural, the products being coffee and cocoa; also sugar cane, bananas, cotton, indigo, cocoa nuts, Indian corn, etc. There are also vast plains where the breeding of cattle is carried on to a great extent, for the sake of their hides, which are exported. Rubber, copaiba and other articles of value are produced.

Venezuela's mineral wealth is as yet practically untouched and apparently as inexhaustible. There is hardly a mineral which is not found here; iron, gold, petroleum, silver, copper, lead, etc., are found in every direction. The working of these mines ought, under improved conditions, among which may be mentioned those of land traffic and transit, to add greatly to the wealth of the country.

Venezuela is already provided with a magnificent water system in the rivers of the Orinoco and its 458 tributaries and the Apure, and when once these great natural arteries are supplemented by feeders in the form of roads, a new era of prosperity should dawn for the country.

**MONEY**—The bolivar=9 3/5d. (divided into 100 centimes)=19 cents U. S.

**WEIGHTS AND MEASURES**—The metric system.

### *Law.*

Law May 18, 1877.

### *Duration.*

The exclusive right for the use of all trade or commerce marks registered and certified shall be in complete legal force for a term of thirty years, to be reckoned from the date it was regis-

tered, with the exception of the case when the mark covers articles manufactured abroad, and in which the same mark is protected, according to the law of a foreign country, for a shorter period; then the mark registered by virtue of this law shall cease to enjoy the official protection which it grants at the same time when protection granted by the foreign law ceases.

#### *Renewal.*

During six months prior to the expiration of the term of thirty years the petitioner can ask for the renewal of the registry of any trade or commerce mark, and this shall be granted under the same conditions as when first given, in a title written on sealed paper of the same class as formerly. The duration of this registration shall be for thirty years, as in the first case.

#### *Who May Register.*

Any person or company domiciled in the Republic, and any corporation created by national authority or by the Federal States or Territories, as well as any person, company or corporation domiciled in a foreign country in which, by virtue of a treaty or agreement, Venezuelans have the same or analogous rights as those granted by this law, can obtain protection or guaranty covering any legitimate trade or commerce mark for the use of which an exclusive right has been granted, or the adoption or use of which is desired for this purpose, provided the requirements of the present law have been complied with. (Art. 1.)

#### *Requirements.*

Power of attorney legalized by the Venezuelan consul; certified copy of original registered mark, legalized by Venezuelan consul; 6 facsimiles of the mark.

#### *Mode of Application.*

Any person desiring to obtain official protection for a trade or commerce mark, shall file before the Minister of Fomento a petition on sealed paper of the seventh class, expressing the name of the interested person, his residence and business domicile; the kind of article or merchandise covered or intended to be covered by the trade or commerce mark, the peculiar description of the articles or objects included in the class covered or intended to be covered by the trade mark; a description of the same, with facsimiles, in which can be seen its application and use, and, finally, the time during which the trade mark has already been in use, in case that it should not be the first time that its use or application is petitioned for.



Said petition shall be signed by the interested person, or by the person representing him, provided he can show a power of attorney in due form from the owner or owners of the trade mark, also stating in writing that the person petitioning for the trade or commerce mark has the right to use it, and that said trade mark does not resemble any other analogous one already registered, so that it could not be mistaken for it and thus deceive the public. The interested party shall also assert that the aforesaid description or facsimiles which are to be registered in the corresponding book are exact copies of the trade mark for which protection is asked.

The Minister of Fomento can not receive or register a trade or commerce mark which is not and can never be a lawful mark, or which is merely the name of a person, company or corporation not accompanied by a mark sufficient to distinguish it from the same name when used by another person, or that the mark be equal to another covering the same class of objects and belonging to another person, or that the said mark be registered or presented to be registered, or that it be so much like the last-mentioned trade mark that it can be easily mistaken for it and thus deceive the public.

When any trade or commerce mark is submitted to the Department of Fomento to obtain the protection which this law grants, the date of submittal shall be recorded and registered, and copies of the trade mark, with the date of its presentation and of the petition addressed to the Minister of Fomento, sealed with seal of the department and certified by the Minister, shall be considered sufficient proof in case a controversy should arise as to priority for the use of the trade mark.

When the established provisions have been complied with, the National Executive, through the Department of Fomento, shall issue to the interested party, provided there be no opposition from a third party, a certificate *in national sealed paper of the third class, which the interested party is to provide*, in which it shall be declared that said person is the proprietor of the trade or commerce mark registered with all its specifications. Said certificate, which shall be sufficient title for the Registrar, shall be signed by the Minister of Fomento and sealed with the seal of the Ministry.

#### *Infringements.*

No person can legally claim the exclusive right to a trade mark which is used or intended for use in unlawful trade or for an object noxious in itself, or for a trade mark which has been obtained by fraud, or which has been formed or used with a view of deceiving the public when buying or selling any merchandise.

Any person endeavoring to obtain, personally or through some

one else, the registration of any trade or commerce mark, or who may petition the Fomento Department for anything which bears on this subject, by means of false or fraudulent representations or declarations in words or writing, or by any other fraudulent means, shall be subject to the penalties established by the criminal code, notwithstanding which the third party has always the right of claim for damages.

Any person found reproducing, imitating or copying a registered trade mark, or using it on any merchandise containing the same properties and qualities as those described in the registry, is held answerable before the court for the damages caused by the illegal use of such mark without being held free in cases of fraud from suffering the penalties established by the criminal code.

#### *Assignments.*

Trade marks are at all times transferable independently of the business for which they are used.

#### *Law in Force in Venezuela to Prevent the Sale or Importation of Goods Bearing a False Indication of Origin.*

No law is in force to prevent the importation and sale of goods bearing a false indication of origin. The importation and offering for sale of goods falsely marked with trade mark registered in Venezuela are prohibited by law. Any purchaser of goods thus marked may bring a criminal action against their vender. The cost of bringing such an action is from \$75 to \$100.00.

Marking Goods: "Marca Registrada."

#### *Proprietary Remedies.*

A measure promulgated by the Minister of Hacienda, places in force a regulation of the Association of Physicians of Venezuela, whereby sales of secret or patent medicines, unless formally recognized in Venezuela, are to be prohibited, although they may have the approval of foreign medical faculties. Failure to meet the requirements will subject the offenders to the penalties of the law. A permanent commission has been appointed to examine and classify secret, or patented medicines. Every manufacturer wishing to sell medicinal preparations in Venezuela must make a statement, in legal form, setting forth: (1) The name of the remedy, (2) the full formula, and (3) the dose prescribed. Two samples, accompanied by the foregoing particulars, shall be submitted to the commission. The manufacturer may appoint by letter, if necessary, a local representative to treat with the commission. For each certificate permitting the sale of a medicine, a tax of \$3.86 must be paid.

Four months will be allowed foreign, and two months domestic manufacturers, in which to comply with these requirements. When this time is concluded the custom houses will place for two months, importations of the kind in Class 5 of the tariff, paying a higher duty, during which period the preparations may still be brought before the commission. After this they will be put on the list of prohibited articles. The custom houses will continue their examination and appraisal, as heretofore. New, secret, or patent medicines, compounded after the termination of the time given, may be submitted for examination upon fulfilling the requisite formalities. All preparations allowed sale will bear an authoritative inscription to that effect on the wrappers.

The address of the commission, which will examine samples within five days after presentation, is: Junta de Examen y Clasificacion de Medicinas Secretas y de Patente, Caracas.

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## ZANZIBAR

The dominions of the Sultan of Zanzibar formerly comprised, in addition to the islands of Zanzibar and Pemba territories, extending some 600 miles along the coast of the mainland as far north as Warsheikh and south of Tunghi Bay and indefinitely inland, together with the adjacent islands. In 1886 a commission of the three powers (Great Britain, France and Germany) marked out the western boundaries of the territory on the mainland, which may be stated as extending 10 miles inland from the sea. Since the cession of the coast line from Rovuma to Vanga, including the Island of Mafia, to Germany in 1890, the territory is bounded on the south by the boundary line between the British and German territories in East Africa, which extends in a northwesterly direction from the north bank of the mouth of the River Umba to where the first parallel of north latitude reaches Lake Victoria. The strip is under the nominal suzerainty of the Sultan of Zanzibar, but is administered by the Governor of British East Africa.

It was officially notified on November 4, 1890, that by agreement with the Sultan of Zanzibar the dominions of His Highness were placed under the protection of His Britannic Majesty.

The Island of Zanzibar is about 60 miles in length, and has an area of 640 square miles. The town is situated on the west of the island, and is the principal place of trade; the population of the island is estimated at about 200,000, and of the town about 65,000. Foremost among the products of the islands of Zanzibar and Pemba stand cloves, amounting to about four-fifths of the crop of the whole world, next to which comes Copra. The

imports consist principally of cotton goods, petroleum, rice and foodstuffs.

MONEY—1 rupee (100 cents)=1 s. 4 d.=32 cents U. S.

WEIGHTS AND MEASURES—Same as Great Britain, with the following exception—the gisla (measure of caffre corn) 360 lbs. avoirdupois.

#### *Law.*

Trade marks can only be accepted for registration in Zanzibar if they are registered in Great Britain under the Patent Designs and Trade Marks Acts, or if they have been protected in accordance with the law in any British possession or foreign state, to which the provisions of Sec. 103 of the Act of 1883 have been, by order in council, made applicable.

Any act which, if done in British India, would be an offense against the law at the time being in force in British India relating to trade marks, etc., shall, if done in Zanzibar by a person subject to the Order in Council relating to Zanzibar, be punished by imprisonment.

#### *Requirements.*

Power of attorney; certified copy of British registration; six copies of the mark; one electrotype. (Forms for application may be obtained from B. Singer's Offices.)

## REQUIREMENTS

### ARGENTINE

Spanish power of attorney, legalized by the Argentine Consul; 14 facsimiles of the mark; 1 electrotype; Spanish description of the mark, in duplicate; if it consists of a picture or an emblem, it must indicate the class to which it is applied and whether it applies to products of manufacture, or of the soil, or to objects of commerce.

(Form for application may be obtained from B. Singer's offices.)

### AUSTRALIA

Power of attorney; 1 electrotype, not exceeding two inches square; 12 facsimiles of the mark.

(Form for application may be obtained from B. Singer's offices.)

### AUSTRIA

Certified copy of home registration; power of attorney; 30 facsimiles of the mark; 2 electrotypes.

(Form for application may be obtained from B. Singer's offices.)

### BAHAMA ISLANDS

Power of attorney, legalized; application; 6 copies of the mark.

(Form for application may be obtained from B. Singer's offices.)

### BARBADOS

Power of attorney; 8 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

### BELGIUM

Power of attorney (see Form No. 3, B. Singer's book of forms); 6 facsimiles of the mark; 1 electrotype.

### BERMUDA

Application signed by the applicant, no legalization required; 3 facsimiles of the mark, one to be fixed within the blank space left in the application and the two others on separate sheets of foolscap of same size; power of attorney signed by the applicant, no legalization required.

(Form for application may be obtained from B. Singer's offices.)

## BOLIVIA

Power of attorney, legalized by the Bolivian Consul (see Form No. 1, B. Singer's book of forms); 6 facsimiles of the mark. The dimensions and colors used in every mark that consists of labels or typical designs must be given.

## BRAZIL

Power of attorney (see Form No. 5, B. Singer's book of forms), legalized by a Brazilian Consul; 10 copies of each mark; full description of each mark, with claims and indications of goods; home registration, legalized by Brazilian Consul.

When the owner of a trade mark applies for registration of a trade mark not registered in the home country he must file the following documents: Power of attorney, legalized by the Brazilian Consul; certificate from the Patent office showing that the trade mark has not been registered; document showing that applicant has commercial or industrial establishment in the country where he resides; 10 copies of the mark. All documents must be legalized by the Brazilian Consul.

## BRITISH GUIANA

Power of attorney, legalized; a certificate of home registration verified by affidavit or statutory declaration of the proprietor; 3 copies of the mark; 1 electrotype. Affidavits and statutory declarations must be sworn to before a notary public in the United Kingdom or before a British Consul in foreign countries.

(Forms for application may be obtained from B. Singer's offices.)

## BRITISH HONDURAS

Power of attorney; a certificate of home registration verified by affidavit or statutory declaration of the proprietor; 3 copies of the mark; 1 electrotype.

(Forms for application may be obtained from B. Singer's offices.)

## BRITISH CENTRAL AFRICA PROTECTORATE

Power of attorney; 6 copies of the mark; 1 electrotype or wood cut.

(Forms for application may be obtained from B. Singer's offices.)

## BRITISH EAST AFRICA

Power of attorney; 4 copies of the mark; certified copy of the British registration.

(Forms for application may be obtained from B. Singer's offices.)

## BRITISH NORTH BORNEO

Power of attorney; 6 facsimiles of the mark; 1 electrotype.

(Forms for application may be obtained from B. Singer's offices.)

## BULGARIA

Power of attorney, legalized by a Bulgarian Consul or U. S. Department of State; certificate of home registry, legalized; 8 facsimiles of the mark; 1 electrotype.

(Forms for application may be obtained from B. Singer's offices.)

## CANADA

Power of attorney; application in duplicate; description of mark, stating whether it is intended for use as a general or specific one; 4 copies of the mark.

(Forms for application may be obtained from B. Singer's offices.)

## CAPE PROVINCE

Power of attorney, legalized; application; declaration, legalized by British Consul; 6 copies of the mark; 1 electrotype.

(Forms for application may be obtained from B. Singer's offices.)

## CEYLON

Power of attorney; 6 copies of the mark; 1 electrotype or wood cut.

(Forms for application may be obtained from B. Singer's offices.)

## CHANNEL ISLANDS

Trade marks may be protected in Jersey and Guernsey by entering a certificate of registration in Great Britain in the rolls of the Royal Courts.

## CHILE

Power of attorney, legalized by Chilean Consul; 7 copies of the mark.

(Forms for application may be obtained from B. Singer's offices.)

## COLOMBIA

Power of attorney, legalized by Colombian Consul; certified copy of home registration; 10 copies of the mark.

(Forms for application may be obtained from B. Singer's offices.)

## CONGO FREE STATE

Power of attorney; 6 facsimiles of the mark; 1 electrotype.

(Forms for application may be obtained from B. Singer's offices.)

## COSTA RICA

Power of attorney, legalized by Costa Rican Consul; 8 copies of the mark; 1 electrotype.

(Forms for application may be obtained from B. Singer's offices.)

## CRETE

Power of attorney; 2 facsimiles of the mark; 1 electrotype.

(Forms for application may be obtained from B. Singer's offices.)

## CUBA

Power of attorney, legalized; certified copy of the home trade mark, legalized by Cuban Minister or Consul; 15 facsimiles of the mark.

(Form for application may be obtained from B. Singer's offices.)

## CURACAO

Power of attorney, no legalization. One power suffices for several applications filed at the same time. Ten copies of the mark; electrotype, measuring in length and width not under 1.5 cm. and not exceed 10 cm., and of a depth exactly 24 mm.

(Form for application may be obtained from B. Singer's offices.)

## CYPRUS

Power of attorney; 6 copies of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## DANISH WEST INDIES

Power of attorney, legalized by Danish Consul; official copy of the registry in Denmark; 1 electrotype; 5 copies of the mark.

(Form for application may be obtained from B. Singer's offices.)

## DENMARK

Power of attorney (see Form No. 8, B. Singer's book of forms), legalized; 3 copies of the mark; 2 electrotypes or wood cuts; certified copy of home registration.



## DOMINICAN REPUBLIC

Power of attorney, legalized; certified copy, legalized; 4 facsimiles of the mark.

(Form for application may be obtained from B. Singer's offices.)

## DUTCH EAST INDIES

Power of attorney, no legalization; 10 copies of the mark; electrotype, measuring in length and width not under 1.5 cm. and not exceeding 10 cm.

(Form for application may be obtained from B. Singer's offices.)

## ECUADOR

Power of attorney, signed before two witnesses and Consul; 25 facsimiles of the mark; 1 electrotype of the mark, the length and breadth of which must not be less than 15 mm. ( $5/8$  inch) nor more than 100 mm. ( $3\ 15/16$  inch), height 20 mm. ( $13/16$  inch) to 30 mm. ( $1\ 3/16$  inch); a receipt proving the payment of the prescribed fee; a consent in writing, if the mark consists of the name or portrait of an individual.

(Form for application may be obtained from B. Singer's offices.)

## EGYPT

Power of attorney; certified copy of home registration; 1 electrotype; 6 facsimiles of the mark; name and address of the applicant; also statement of the goods for which the trade mark is used.

(Form for application may be obtained from B. Singer's offices.)

## ERITREA

Power of attorney in legal form, when the application is not presented by an interested party; 2 facsimiles of the mark; 2 copies of the certificate of registration, of the description, if there be one, and of the declaration, issued by the Minister of Agriculture, Industry and Commerce of the Kingdom.

(Form for application may be obtained from B. Singer's offices.)

## FALKLAND ISLANDS

Power of attorney and 6 copies of the mark.

(Form for application may be obtained from B. Singer's offices.)

## FIJI ISLANDS

Power of attorney; 7 copies of the mark; 2 electrotypes.

Application, accompanied by representations of the trade marks, must be advertised in Gazette and newspaper.

(Form for application may be obtained from B. Singer's offices.)

#### FINLAND

Power of attorney, legalized; certified copy of home registration, not legalized; 2 copies of the mark; 2 electrotypes or wood cuts.

(Form for application may be obtained from B. Singer's offices.)

#### FRANCE

Power of attorney; 3 facsimiles of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

#### FRENCH COLONIES AND PROTECTORATES

Power of attorney; 3 facsimiles of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

#### GAMBIA

Power of attorney; 3 facsimiles of the mark; full statement of the goods for which same is to be used, as well as applicant's address; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

#### GERMANY

Certified copy of home registration, legalized by the German Consul; power of attorney; 5 copies of the mark; 1 electrotype.

(Forms for application may be obtained from B. Singer's offices.)

#### GIBRALTAR

Power of attorney; 3 facsimiles of the mark; statement of the goods for which the same is to be used, as well as applicant's address; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

#### GOLD COAST COLONY

Power of attorney; 3 copies of the mark; statement of the goods for which same is to be used, as well as applicant's address; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## GREECE

Certified copy of home registration, legalized by Greek Consul; power of attorney, legalized; 3 copies of the mark and a metal typographic block.

(Form for application may be obtained from B. Singer's offices.)

## GRENADA

Power of attorney; 8 copies of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## GREAT BRITAIN

Power of attorney; 6 copies of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## GUATEMALA

Power of attorney, legalized; certified copy of original registered trade mark, legalized; 10 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## HONDURAS

Power of attorney, legalized by Honduras Consul; 2 copies of the mark; certified copy of original registered mark, legalized.

(Form for application may be obtained from B. Singer's offices.)

## HONG KONG

Power of attorney; application; declaration; 6 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## HUNGARY

Power of attorney; certified copy of home registration; 4 facsimiles of the mark; 2 electrotypes.

(Form for application may be obtained from B. Singer's offices.)

## ICELAND

Power of attorney; copy of the Danish trade mark; 3 facsimiles of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## INDIA

Power of attorney, legalized; declaration; 6 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## ITALY

Power of attorney, legalized; certified copy of home registration, legalized by the Italian Consul; 4 copies of the mark.

(Form for application may be obtained from B. Singer's offices.)

## JAMAICA

Power of attorney; application; where trade mark is registered in Great Britain, a certified copy of the British registration; 3 facsimiles of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## JAPAN

Power of attorney (see Form No. 17, B. Singer's book of forms); certificate of nationality; 10 facsimiles of the mark; 1 electrotype.

## LEEWARD ISLANDS

Authorization; 7 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## LIBERIA

Power of attorney; description of the goods; 5 copies of the mark.

(Form for application may be obtained from B. Singer's offices.)

## LUXEMBOURG

Power of attorney, no legalization required; 2 copies of the mark on detached cardboard, not to exceed 8 x 10 cm.; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## MALTA AND GOZO

Power of attorney; 2 facsimiles of the mark.

(Form for application may be obtained from B. Singer's offices.)

## MAURITIUS

Power of attorney; 5 specimens of the mark; 3 electrotypes.

(Form for application may be obtained from B. Singer's offices.)

MEXICO

Power of attorney; petition; description of the mark with claims in triplicate; 15 facsimiles of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

MONTENEGRO

Power of attorney, signed by the applicant and legalized by a Consul; 6 facsimiles of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

NATAL

Power of attorney; application; 6 facsimiles of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

NETHERLANDS (HOLLAND)

Power of attorney; 6 copies of the mark; if colors are essential to mark it must be so stated and 10 extra colored copies supplied; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

NEWFOUNDLAND

Power of attorney; application; declaration, legalized by British Consul; 6 copies of the mark.

(Form for application may be obtained from B. Singer's offices.)

NEW ZEALAND

Power of attorney; application; 4 facsimiles of the mark; 1 electrotype or wood cut representing the mark exactly as it is required to be registered.

(Form for application may be obtained from B. Singer's offices.)

NICARAGUA

Power of attorney, legalized and authenticated by a Nicaraguan Consul; 1 electrotype and 6 reproductions of the same on thin paper.

(Form for application may be obtained from B. Singer's offices.)

NORTHERN NIGERIA

Power of attorney; 6 copies of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## NORWAY

Power of attorney; certified copy of home registration; 11 facsimiles of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## ORANGE RIVER COLONY

Power of attorney; application; affidavit; 6 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## PANAMA

Power of attorney, legalized; 10 copies of the mark; 1 electrotype; a certified copy of home registration, legalized.

(Form for application may be obtained from B. Singer's offices.)

## PARAGUAY

Power of attorney, legalized by Paraguayan Consul; 2 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## PERU

Power of attorney, attested by a notary public and legalized by a Peruvian Consul; 8 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## PHILIPPINE ISLANDS

Power of attorney; 1 drawing; letter of advice; statement and declaration; 5 facsimiles of the mark.

(Forms for application may be obtained from B. Singer's offices.)

## PORTO RICO

Power of attorney; 6 facsimiles of the mark; 1 drawing; letter of advice; statement and declaration.

(Forms for application may be obtained from B. Singer's offices.)

## PORTUGAL

Power of attorney, signed by the applicant, no legalization necessary; 6 copies of the mark, not exceeding 10 cm. square; 1 electrotype; unlegalized official certificate showing registration in the applicant's native country.

(Form for application may be obtained from B. Singer's offices.)

## PORTUGUESE COLONIES

A certificate of the Portuguese registration; power of attorney.  
(Form for application may be obtained from B. Singer's offices.)

## RHODESIA

Power of attorney, legalized; application; declaration, legalized by British Consul; 8 copies of the mark and 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## ROUMANIA

Power of attorney, legalized by Roumanian Consul; 2 facsimiles of the marks; statement of the goods to which the mark belongs; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## RUSSIA

Power of attorney in the Russian language, legalized by a Russian Consul; 50 facsimiles of the mark; a certificate of registration in the native country, legalized by Russian Consul; a translation of the same which must be translated either by a sworn Russian translator or certified by a Russian Consul as correct.

(Form for application may be obtained from B. Singer's offices.)

## SALVADOR

Power of attorney, legalized; 20 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## SANTO DOMINGO

See Dominican Republic.

## ST. HELENA

Power of attorney; 6 copies of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## ST. LUCIA

Power of attorney; 6 copies of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## ST. VINCENT

Power of attorney; 6 copies of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## SERVIA

Power of attorney, legalized by Servian Consul; certified copy of home registration, legalized; 6 copies of the mark and a sample of material marked.

(Form for application may be obtained from B. Singer's offices.)

## SEYCHELLES

Power of attorney; 6 copies of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## SIAM

Power of attorney; certified copy of home registration; 10 facsimiles of the mark, to be divided among the different consulates.

(Form for application may be obtained from B. Singer's offices.)

## SOUTHERN NIGERIA

Power of attorney; 6 facsimiles of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## SPAIN

Certified copy of home registration, legalized by the Spanish consul; power of attorney; 5 facsimiles of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## STRAITS SETTLEMENTS

Power of attorney; certified copy of British registration; 4 copies of the mark.

(Form for application may be obtained from B. Singer's offices.)

## SURINAM

Power of attorney; 10 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)



## SWEDEN

Power of attorney; certified copy of home registration; 5 copies of the mark; 2 electrotypes.

(Forms for application may be obtained from B. Singer's offices.)

## SWITZERLAND

Power of attorney, no legalization required; certified copy of home registration; 5 copies of the mark; 1 electrotype or wood cut; declaration, or the like, verifying applicant's business, must be produced.

(Form for application may be obtained from B. Singer's offices.)

## TRANSVAAL

Power of attorney; application; 6 facsimiles of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## TRINIDAD AND TOBAGO

Power of attorney, legalized; 8 copies of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## TUNIS

Power of attorney, legalized; 3 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

## TURKEY

Power of attorney, legalized; 6 facsimiles of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## UNITED STATES

Power of attorney; petition; statement; declaration; appointment of representative; 5 facsimiles of the mark; certified copy of home registration, legalized by U. S. consul; 1 drawing.

(Forms for application may be obtained from B. Singer's offices.)

## URUGUAY

Power of attorney, legalized by Uruguayan consul; certificate of registration in the country of origin, legalized; 10 copies of the mark; 1 electrotype or wood cut.

(Form for application may be obtained from B. Singer's offices.)

## VENEZUELA

Power of attorney, legalized by a Venezuelan consul; certified copy of original registered mark, legalized by the Venezuelan consul; 6 facsmiles of the mark.

(Form for application may be obtained from B. Singer's offices.)

## ZANZIBAR

Power of attorney; declaration; certified copy of British registration; 6 copies of the mark; 1 electrotype.

(Form for application may be obtained from B. Singer's offices.)

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The foregoing requirements are those of the various Patent Offices with the exception of the facsimiles, the number called for having been increased as the foreign attorneys generally require extra copies for their files. In several countries the requirements as to facsimiles have been changed.

## PRIORITY OF USE

Registration is granted to the first user in the following countries:

Australia	Denmark
Austria	Dutch East Indies
Bahama Islands	Ecuador
Barbados	Egypt
Belgium	Eritrea
Bermudas	Falkland Islands
Bolivia (registration compulsory)	Fiji Islands
British Guiana	France
British Honduras	French Colonies and Protectorates
British Central Africa Protectorate	Gambia
British East Africa	Gibraltar
British North Borneo	Gold Coast Colony
Canada	Greece
Cape Province	Grenada
Ceylon	Great Britain
Congo Free State	Hong Kong
Crete	Hungary
Cuba (registration compulsory)	Iceland
Curacao	India
Cyprus	Italy
Danish West Indies	Japan
	Leeward Islands
	Luxembourg

Malta and Gozo	St. Helena
Mauritius	St. Lucia
Mexico	St. Vincent
Natal	Seychelles
Netherlands	Siam
Newfoundland	Southern Nigeria
New Zealand	Spain
Northern Nigeria	Straits Settlements
Norway	Surinam
Orange River Colony	Switzerland
Panama	Transvaal
Philippine Islands	Trinidad and Tobago
Porto Rico	Tunis
Rhodesia	Turkey
Russia	United States
Salvador	Zanzibar

In Great Britain and all the British colonies and independencies, registration is granted the first ~~user~~ user, and gives absolute title after five years, if not sooner removed.

### FIRST APPLICANT

Registration is granted to the first applicant in the following countries:

Argentine	Liberia
Brazil	Montenegro
Bulgaria	Nicaragua
Chile (rights of the prior user recognized)	Paraguay
Colombia	Peru
Costa Rica	Portugal
Dominican Republic	Portuguese Colonies
Finland	Roumania
Germany	Servia
Guatemala	Sweden
Honduras	Uruguay
	Venezuela

### MARKING TRADE MARKS

Argentine	....."Marca Registrada"
Australia	....."Registered Trade Mark"
Austria	....."Schutzmarke"
Bahama Islands	....."Registered Trade Mark"
Barbados	....."Registered Trade Mark"
Belgium	....."Marque Deposée"
Bermuda Islands	....."Registered Trade Mark"
Bolivia	....."Marca Registrada"
Brazil	....."Marca Registada"

British Guiana .....	"Registered Trade Mark"
British New Guiana.....	"Registered Trade Mark"
British North Borneo.....	"Registered Trade Mark"
British Honduras .....	"Registered Trade Mark"
Bulgaria.....	"Marque Enregistree," or abbreviation "M. E."
Canada .....	"Registered Trade Mark"
Cape Province .....	"Registered Trade Mark"
Central Africa Protectorate.....	"Registered Trade Mark"
Ceylon .....	"Registered Trade Mark"
Channel Islands .....	"Registered Trade Mark"
Chile .....	"M. C." or "M. F."
Colombia .....	"Marca Registrada"
Congo Free State.....	"Marque Déposée"
Costa Rica .....	"Marca Registrada"
Cuba .....	"Marca Registrada"
Curacao .....	"Gedeponoord Fabrieksmerk" for industrial marks; "Gedeponoord Handels- merk" for commercial marks; "Wettig Gedepo- neerd" (most generally used, registered in ac- cordance with the Act)
Cyprus .....	"Registered Trade Mark"
Denmark .....	"Indregistreret Varemaerke"
Dominican Republic (Santo Domingo)...	"Marca Registrada"
Dutch East Indies.....	"Gedeponoord Fabrieksmerk" for industrial marks; "Gedeponoord Handels- merk" for commercial marks; "Wettig Gedepo- neerd" (most generally used, registered in ac- cordance with the Act)
East Africa Protectorate.....	"Registered Trade Mark"
Ecuador .....	"Marca Registrada"
Egypt .....	"Registered Trade Mark"
Falkland Islands .....	"Registered Trade Mark"
Finland .....	"Varumarke"
France .....	"Marque Déposée"
Fiji Islands .....	"Registered Trade Mark"
Germany .....	"Eingetragene Schutzmarke"
Gambia .....	"Registered Trade Mark"
Gibraltar .....	"Registered Trade Mark"
Gold Coast Colony.....	"Registered Trade Mark"
Great Britain .....	"Registered Trade Mark"
Greece .....	"Registered Trade Mark" (in the Greek language)

Grenada .....	"Registered Trade Mark"
Guatemala .....	"Marca Registrada"
Honduras .....	"Marca Registrada"
Hong Kong .....	"Registered Trade Mark"
Hungary .....	"Védejegy"
Iceland .....	"Indregistreret Varemaerke"
India .....	"Registered Trade Mark"
Italy .....	"Marca Depositata"
Jamaica .....	"Registered Trade Mark"
Japan .....	"Registered Trade Mark" (in Japanese)
Leeward Islands .....	"Registered Trade Mark"
Luxembourg .....	"Marque Déposée"
Malta and Gozo.....	"Registered Trade Mark"
Mauritius .....	"Registered Trade Mark"
Mexico .....	"Marca Industrial Registrada" or "M. Ind. Rgtrda," used by manufacturers, indus- trialists, agriculturists, etc., with number and date of registration.
	* "Marca de Comercio Registrada" or "M. de C. Rgtrda," used by merchants, with number and date of reg- istration.
Montenegro .....	"Registered Trade Mark" (in the language of the country)
Natal .....	"Registered Trade Mark"
New Foundland .....	"Registered Trade Mark"
New Zealand .....	"Registered Trade Mark"
Netherlands (Holland) .....	"Gedeponeerd Fabrieksmerk" for industrial marks; "Gedeponeerd Handels- merk" for commercial marks; "Wettig Gedepo- neerd" most generally used
Nicaragua .....	"Marca Registrada"
Northern Nigeria .....	"Registered Trade Mark"
Norway .....	"Registrert Varemerke"
Oman .....	"Registered Trade Mark"
Orange River Colony.....	"Registered Trade Mark"
Panama .....	"Marca Registrada"
Paraguay .....	"Marca Registrada"
Peru .....	"Marca Registrada"
Philippine Islands .....	"Registered Trade Mark"
Porto Rico .....	"Registered Trade Mark"
Portugal .....	"Marca Registrada"

Portuguese Colonies	“Marca Registrada”
Rhodesia	“Registered Trade Mark”
Russia	“Registered Trade Mark” (in the Russian language)
Roumania	“Registered Trade Mark” (in Roumanian language)
San Salvador	“Marca Registrada”
St. Lucia	“Registered Trade Mark”
St. Vincent	“Registered Trade Mark”
Servia	“Registered Trade Mark” (in Servian language)
Seychelles Islands	“Registered Trade Mark”
Siam	“Registered Trade Mark”
Sierra Leone	“Registered Trade Mark”
Somaliland Protectorate	“Registered Trade Mark”
Southern Nigeria	“Registered Trade Mark”
Spain	“Marca Registrada”
Straits Settlements	“Registered Trade Mark”
Sudan	“Registered Trade Mark”
Surinam	“Gedeponeerd Fabrieksmerk” for industrial marks; “Gedeponeerd Handels- merk” for commercial marks; “Wettig Gedepo- neerd” most generally used
Sweden	“Varumärke” or “Registrerad Varumärke”
Switzerland	“Schutzmarke” or “Marque Déposée”
Transvaal	“Registered Trade Mark”
Trinidad	“Registered Trade Mark”
Tunis	“Marque Déposée”
Turkey	“Marque Déposée” or “Registered Trade Mark” in Turkish language
Uruguay	“Marca Registrada”
United States of America	“Reg. U. S. Pat. Off.”
Venezuela	“Marca Registrada”

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**Laws in Force in the Principal Foreign Countries to Prevent  
the Sale or Importation of Goods Bearing  
a False Indication of Origin.**

**ARGENTINE REPUBLIC**

The law prohibits the application to goods of a falsified or fraudulently imitated trade mark, as well as the sale, placing on sale, or circulation of articles bearing such marks. It also prohibits the application to goods with fraudulent intention of a mark containing a false indication of origin, as well as the sale or placing on sale of goods thus marked.

Trade names also receive protection. In cases in which a registered trade mark is involved the laws appear to afford ample protection against goods bearing a false indication of origin; otherwise a plaintiff has to prove that he has suffered loss or damage by being deceived as to the country of origin. All goods imported have to be accompanied by a certificate of origin vised by an Argentine consul, but the penalty for false information is not considered sufficiently stringent to prevent a false statement as to origin. There are no requirements as to the marking of imported goods to show their country or place of origin or to denote that they are foreign.

## AUSTRIA-HUNGARY

### AUSTRIA

No law is in force to prevent the sale or importation of goods bearing a false indication of United States or other origin except in the case of hops. Existing laws merely protect trade and manufacture marks registered.

### HUNGARY

The law in force affecting the matter in question prohibits the marking of goods with names or titles falsely indicating United States or other foreign origin. The authorities are bound to prosecute if such offenses are brought to their notice, either by foreign governments or their representatives, or by foreign traders. No measures are in force to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods to show the country or place of origin or to denote that they are foreign.

### BELGIUM

No special laws are in force to prevent the sale or importation of goods bearing false indications of origin, except those which merely approve the Convention of Paris of March 20, 1883, as modified by the Arrangement of Madrid of 1891, relating to the international registration of trade marks, and by the additional act of Brussels of December, 1900. The convention of 1883 prohibits the importation of goods falsely bearing the name of any locality as indication of origin, but only provided that such indication is associated with a trade name of a fictitious character or assumed with fraudulent intention. Full protection is given by law to trade marks and to the trade names of manufacturers. The public prosecutor possesses the sole authority to enforce the

measures of the convention, but parties interested may request him to take steps to protect their rights.

Although there is no special law on the matter, by bringing an action under the Civil Code before commercial courts, merchants can restrain the sale of any goods bearing a false indication of origin if they are marked with the name of a town or district which is well known as a place where goods of that description are manufactured or produced. Only the merchants or manufacturers of the place in question could bring such an action. A criminal prosecution can also be brought by a purchaser of goods if he can prove that he has been deceived as to their origin and that the deception has caused him damage. For infringement of his trade mark or trade name a manufacturer could obtain redress in either a criminal or commercial court. The cost of a criminal case is practically nil, except the lawyer's fee. In a commercial case the costs for service of writ are about 15 francs, and no further expenses have, as a rule, to be paid except a proportional duty on damages obtained if the case is successful, lawyer's fees, and the costs necessary for execution of judgment. The costs are small compared with those of United States or English litigation.

### BRAZIL

The laws in force prohibit the sale, but not the importation of goods bearing a false indication of origin. However, the importation of such goods can also be prevented since any manufacturer or trader in similar articles, established in the place purporting to be the place of origin of the imported goods, can have them seized and detained. The falsification and imitation of registered trade marks and the sale or exposition for sale of goods bearing falsified or imitated registered trade marks are punishable offenses. Foreigners receive this protection for trade marks registered in their country if their state grants reciprocal treatment to Brazilian trade marks or if it belongs to the Industrial Property Union. It is not in the power of representatives of foreign governments to take steps to enforce the laws. To take legal proceedings the party must be interested, i. e., a manufacturer or trader. The customs authorities can seize imported goods if their origin is suspicious, though in view of the stringency of the customs regulations, which require the origin of all articles to be stated in the consular invoices (which must accompany all imported goods), false declarations should be extremely difficult. Beyond those already mentioned, no special steps are taken to prevent the importation of goods bearing a false indication of origin. No requirements are in force as to the marking of imported goods to show the place of origin.



## BULGARIA

The law does not protect buyers against goods bearing false indications of origin, but it prohibits the importation and sale or exposure for sale of goods bearing the imitation of a trade mark previously registered in Bulgaria. The Ministry of Commerce and Agriculture attend to the strict application of the law, and the customs authorities are charged with its execution. Representatives of foreign powers look after the protection of the interests of their own subjects, but their co-operation only consists in accelerating the legal procedure. The cost of prosecution is not likely to be very heavy. All goods imported must bear an indication of their origin.

## CHILE

No special legislation exists to prevent the importation of goods bearing a false indication of origin, but under the customs regulations, a declaration of origin must be made for statistical purposes. It is open to traders who have registered a trade mark in Chile and who consider that their business is being injured by the sale of goods bearing false marking or description to bring an action against persons infringing their rights, but the time and expense involved generally deter foreign traders from prosecuting.

## CHINA

No laws are in force to prevent the sale or importation of goods bearing a false indication of origin. No steps are taken to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods, to show the country or place of origin or to denote that they are foreign.

## COLOMBIA

No laws exist prohibiting the sale or importation of goods bearing a false indication of origin. The law prohibits the fraudulent application to goods of another's trade name or of a trade mark registered in Colombia. A civil action for the purpose of claiming damages in respect of these offenses can only be brought by the person injured. A criminal action may be brought by any foreign merchant affected, either acting through the representative of his government in Colombia, or in any other way. The expense of judicial proceedings would usually be small. The indication of the country of origin of imported goods is not required unless they are classified in the customs tariff according to their origin.

## COSTA RICA

No legislation is in force to prevent the sale or importation of goods bearing false indications of origin, except that for the protection of goods having duly registered trade marks. A criminal action could be brought by an injured party or his attorney for infringement of trade marks. If a consul acted he would have to hold power of attorney. The cost of prosecution would be not less than \$300. The country of origin must be stated in the consular invoice and a false description in such invoice would render goods liable to confiscation.

## CUBA

No law is in existence to prevent the sale or importation of goods bearing a false indication of origin, but in the event of a complaint being made to the Department of Patents, based on the arrangement signed at Madrid on April 14, 1891, for the prevention of false indications of origin on goods, the matter would be referred by that department to the Department of Justice. It is thought that a complaint should be made only by an interested party. No steps are taken to prevent the importation of goods bearing false indications of origin. There are no requirements as to the marking of imported goods, to show the country or place of origin or to denote that they are foreign.

## DENMARK

The law prohibits the sale or offering for sale of goods bearing a false indication of origin. The law also prohibits the fraudulent application of a trade mark registered in Denmark or of a trade name to goods for sale, or the offering for sale of goods thus marked. Infringements of the law are generally treated as public police matters and entail public prosecution. Therefore, no expense is incurred by an injured party, unless he claims damages, in which case a private prosecution might be necessary. In the event of a case of infringement having escaped the notice of the police a criminal prosecution would be commenced immediately upon receipt of notice given by the injured party or by their state's legation or consular representative. The cost of prosecution would be considerably less than in the United States or England.

## DOMINICAN REPUBLIC

The only law in force affecting the matter in question relates to the protection of trade marks. This law prohibits the use of trade marks indicating false origin and the sale or

offering for sale of any goods bearing such trade marks, as well as the sale or offering for sale of goods bearing a fraudulent imitation of a trade mark registered in the republic. It is not possible to state as yet in what manner the law will be enforced. No steps have been taken hitherto to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods, to show the country or place of origin or to denote that they are foreign.

#### EGYPT

The only law in force affecting the matter in question is the penal code of the native courts under which native Egyptians can be prosecuted for selling or keeping for sale goods bearing a false trade mark. Persons committing these offenses, who are entitled to the benefits of the capitulations, can only be tried by the consular courts in accordance with the laws of their respective countries. A civil action may be brought before the Mixed Tribunals against anyone knowingly importing or selling goods bearing a counterfeit or imitated mark, at the suit of the owner of the mark. No official steps are taken to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods, except tobacco, to show the country or place of origin or to denote that they are foreign.

#### FRANCE

There is no general law in force prohibiting false marks of foreign origin, but only a law prohibiting false marks of French origin. Goods bearing a false indication of French origin are seized by the customs on importation. The decree of 15th of July, 1892, approves the arrangement of Madrid of 1891, which enacts that all goods bearing a false indication of origin in which one of the contracting states (or a place situated therein) is indicated as the country or place of origin, shall be seized on importation. No direct action is, however, taken by the French authorities as regards the seizure of goods bearing false indications of foreign origin, but interested parties, advised by the customs or by the Procurator of the Republic, have the right to effect seizure and to proceed before the courts. A foreigner being an interested party, could bring an action for damages for unfair competition. The cost of an action recently brought by a British manufacturer against an imitator of his mark is estimated to have been 300 francs, plus solicitor's fees. No direct steps are taken by the French authorities to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods, except as regards

foreign preserved sardines, vegetables, plums and prunes, which must bear an indication of the country of origin. Foreign goods of any kind bearing an indication likely to suggest French origin must, to avoid seizure, be marked with the name of the country of origin.

### GERMANY

Section 14 of the Trade Mark Law of 1894 prohibits the wrongful application to goods of the trade name of another party or of a registered trade mark, as well as the placing on the market or offering for sale of goods thus marked. Trade names of persons residing in foreign countries enjoy this protection without necessity of registration. Section 15 of the law affords protection against false trade descriptions, and Section 16 prohibits the wrongful application to goods of the name of a place or district as well as the offering for sale of goods so marked. Under the provisions of the law against Unfair Competition, 1909, "Any person taking immoral action in commercial transactions for the purposes of competition can be made to discontinue such action and to pay compensation." This clause covers cases of false indications of origin. Proceedings may be taken against persons in respect of false indications of origin either by means of a civil action before the ordinary courts or by means of criminal proceedings. Criminal proceedings except under Section 16 of the Trade Marks Law, can only be instituted on the demand of injured parties. No special regulations are in force for the prevention of importation of goods bearing a false indication of origin, but goods bearing falsified German trade marks may be seized on importation. No provisions have so far been laid down requiring that imported foreign goods must bear an indication of the place of origin except in the case of sparkling wines and brandy; but a section of the Trade Mark Law, 1894, authorizes the Federal Council to retaliate, should any other country impose any conditions as to the marking on goods of German origin.

### GREAT BRITAIN

The "Merchandise Marks Act, 1887," was passed with the object of preventing the false marking and false trade description of goods. It is an offense under the Act to forge a trade mark, or to make or have in possession any machine or other instrument for the purpose of forging a trade mark. It is also an offense to apply any false trade description to any goods, or to be in possession for sale of any goods to which a false description or trade mark has been applied.

A "trade mark" is defined so as to include foreign trade

marks entitled to protection in the United Kingdom, as well as trade marks registered in the United Kingdom.

A "trade description" is defined as meaning any description, statement, or other indication, direct or indirect—

- (1) As to the number, quantity, measure, gauge, or weight of any goods;
- (2) As to the place or country in which the goods were produced;
- (3) As to the mode of manufacture of such goods;
- (4) As to the material of which they are composed; or
- (5) As to their being the subject of any existing patent or copyright.

A "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied.

An application includes not only a direct application, but an application to any cover, label, etc., in or with which the goods are sold, and also placing goods in any cover, label, etc., to which a trade mark or trade description has been applied. Offenses under the Act are punishable by imprisonment and by fine and forfeiture of the goods concerned. It is competent to anyone to put the law in motion for the punishment of the offender, and under "The Merchandise Marks Act, 1891 and 1894," the Board of Trade and the Board of Agriculture, respectively, are authorized to prosecute at the public expense in cases affecting the general interests of the country, or of a section of the community or of a trade.

The Act prohibits the importation of all goods which, if sold, would be liable to forfeiture, viz.: goods to which a false trade mark or a false trade description has been applied. The interests of foreign manufacturers and trading communities are thereby safeguarded in that the prohibition applies to imported goods bearing directly or indirectly an indication of manufacture or production in a foreign country other than the foreign country in which the goods were actually manufactured or produced, while as regards the importation of goods falsely bearing an indication of British origin, the Act expressly prohibits the importation of "all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced." In this way Great Britain has given effect to the stipulations of the International Conventions for the Protection of Industrial Property, signed at Paris in 1883, and at Brussels in 1900,

and of the Arrangement of Madrid, 1891, and for the Prevention of false indications of origin on goods.

But while "The Merchandise Marks Act, 1887," prohibits the false marking and false trade description of all goods, whether home or foreign, it does not prescribe the compulsory marking of the country of origin on imported goods, and consequently the customs regulations provide that "goods imported into the United Kingdom which do not bear any marks whatever, either on the goods themselves or on the coverings containing them, are not subject in any way to the Act, and therefore need not bear any statement or indication such as "Made Abroad," "Made in Germany," etc.

### GREECE

No laws are in force to prevent the sale or importation of goods bearing a false indication of origin, but some of the articles of the penal code relating to fraud might possibly be applicable. The fraudulent application of another person's mark to articles of commerce and the sale, exhibition for sale, and circulation of articles bearing fraudulently imitated or counterfeit marks are punishable offenses. If the articles of the penal code were held to apply, proceedings would have to be taken by an injured party who would have to prove that he had sustained actual damage. No steps are taken to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods to show the country or place of origin or to denote that they are foreign.

### GUATEMALA

The law prohibits the marking of goods with false indications of origin, as well as the sale or offering for sale of goods so marked. The sale of goods bearing a false trade name or trade mark is a punishable offense. A trader in prosecuting for the above offenses would not encounter any great difficulty in obtaining a conviction. Prosecution is expensive. No steps are taken officially to prevent importation of goods bearing false indications of origin. There are no requirements as to the marking of imported goods to show the country or place of origin or to denote that they are foreign.

### HAYTI

There are no laws in force to prevent the sale or importation of goods bearing a false indication of the country of origin.

## HONDURAS

No laws are in force to prevent the sale or importation of goods bearing a false indication of origin, except those intended for the protection of articles which have been duly registered trade marks; the falsification of trade marks and the offering for sale of goods marked with a false trade name or trade mark are punishable offenses. Prosecutions for these offenses are rare, but there would be no difficulty in procuring conviction. Judicial costs are generally small and lawyers' fees are not heavy. No steps are taken to prevent the importation of goods bearing false indication of origin. There are no requirements as to the marking of imported goods to show the country or place of origin.

## ITALY

Under the laws in force the importation, sale, and circulation of goods bearing false trade marks, or false or forged marks or distinctive signs, or marks or distinctive signs which might deceive purchasers in regard to origin are punishable offenses. A United States or other foreign merchant having registered his trade mark in Italy can bring a civil or criminal action against anyone who counterfeits his trade mark. A purchaser can take proceedings if he can prove that an article represented as of United States or British origin has been manufactured in Italy. No steps are taken by the government to prevent the importation of goods bearing a false indication of origin, but as the customs regulations require, for purposes of duty, a correct declaration of the country of origin, there is some check on wholesale abuse. In some cases consular certificates are demanded in support of declaration of origin. There appear to be no requirements as to the marking of imported goods to denote their country of origin or that they are foreign.

## JAPAN

There are no laws prohibiting false indications of origin unless they involve the infringement of a registered trade mark. A trade mark bearing a false indication of origin cannot be registered. If the false indication is added after registration the registration may be cancelled. There are no regulations prohibiting the importation of goods bearing a false indication of origin; but, under the customs regulations, in order to obtain an importation permit, a statement is required including information as to place of production or manufacture. There seems, however, to be no definite penalty for inaccurate statements as to places of origin. There are no regulations requiring the marking of imported goods to show the country or place of origin or to denote that they are foreign.

## MEXICO

Mexico is a signatory of the Convention of Paris of 20th March, 1883, and also of the Madrid Arrangement of 14th April, 1891, and for the international registration of trade marks, but she has not yet adhered to the Madrid Arrangement of 1891 for the prevention of false indications of origin. The only law reported upon relates to the protection of trade marks, and prohibits the fraudulent application to goods of another's registered trade mark or of an imitation of a registered trade mark, and also the sale, and putting on sale, or circulation of goods thus marked. The sale or circulation of goods bearing a trade mark indicating false origin is also prohibited. Under the law referred to prosecutions for the above offenses may be instituted by the public prosecutor or at the instance of an aggrieved person. State prosecutions would apparently cost nothing; in other cases a litigant's expenses might range between \$500 and \$5,000. A general customs ordinance requires a declaration of the name of the country from which goods proceed.

## MOROCCO

Goods belonging to native Moorish merchants bearing counterfeits of British or French trade marks are liable to confiscation, and the author of the falsification would be punished. British subjects in Morocco are bound to observe the provisions of the British Merchandise Marks Act of 1887 and may be prosecuted for any offense against this Act in relation to any property or right of another British subject. British trade marks registered in the United Kingdom are protected against infringement by British subjects. British trade marks registered in Austria-Hungary, Belgium, France, Germany, Italy, Netherlands, Portugal, Russia, Spain and United States are protected in Morocco as against the subjects of those countries, who could be prosecuted in their respective consular courts for infringing such trade marks.

## NETHERLANDS

The law prohibits the importation, sale or offering for sale in the European territory of the Netherlands of goods falsely marked with another's trade name or mark or an imitation thereof, as well as of goods falsely bearing the name of any locality as indication of the place of origin, when such indication is associated with a trade name of a fictitious character.

## NORWAY

The law prohibits the sale or offering for sale, but not the importation, of goods bearing a false indication as to their



place of origin. No steps are taken to prevent the importation of goods bearing a false indication of origin. There are no requirements as to the marking of imported goods to show the country or place of origin or to denote that they are foreign.

#### PANAMA

There is no law preventing the importation and sale of goods bearing a false indication of origin. There are no regulations as to the marking of imported goods to show the country or place of origin or to denote that they are foreign.

#### PERU

There are no laws to prevent the sale or importation of goods whose country of origin may have been falsely indicated. Consular invoices showing country of origin are required for all imported goods. There is no obligation to mark imported goods with an indication of their place of origin.

#### PORTUGAL

The Portuguese law appears to provide for the seizure of goods bearing false indications of origin, whether the goods are thus marked before or after importation—in either case on the petition of an interested party. The enforcement of the law, so far as false indications of origin are concerned, seems to be of very rare occurrence. Traders, if aggrieved, could prosecute. Foreign governments, through their representatives, could press for the enforcement of the law only while the case is within the jurisdiction of the customs and before it reaches the courts. The cost of an action brought by a trader might be between £30 and £100. No official steps are taken to prevent the importation of goods bearing a false indication of origin, but it would be the duty of a customs officer who noticed the case to report and await orders before passing the goods. There is no obligation to mark imported goods to show the country or place of origin, or to denote that they are foreign.

#### ROUMANIA

The Trade Marks Law of 1879 prohibits the importation of all goods bearing false indications of Roumanian origin and renders them liable to seizure either by the customs authorities or at the request of the public prosecutor or of the injured party. By the Anglo-Roumanian Convention of 1893, goods bearing false indications of origin are dealt with in the same way. The false application to goods of another's registered trade mark and the sale or exposition for sale of goods bearing

falsely-applied, counterfeit, or imitated registered trade marks are prohibited by law. Subjects of countries like Great Britain, which have concluded reciprocity trade mark conventions with Roumania, obtain this trade mark protection. A civil or criminal action may be brought for infringement of trade marks after seizure of goods. The probable cost of the action would be from £26 to £48. No special steps, except those already mentioned, are taken to prevent importation of goods bearing a false indication of origin. There is no law as to the compulsory marking of imported goods with the name of the country of origin, but under the convention with Great Britain, if a vendor in Roumania puts his name or address upon goods of British origin coming into Roumania, they must also bear an indication of the country or place of manufacture or production.

### RUSSIA

Foreign goods bearing a false indication of Russian origin, consisting of a Russian trade mark (Kleimo), or the address of a Russian manufacturer, are seized by the customs on importation. The trade mark law of 1896 apparently (though the interpretation has never been decided by the courts) prohibits the application to goods of trade marks containing false indications of any origin, as well as the sale of such goods. Cases of false indications of non-Russian origin are not taken up officially, but if the interested manufacturer or the representative of the foreign power concerned notified the authorities of any contravention of the trade marks law, they would have to institute proceedings. The cost of prosecution is nil except for lawyer's fees. No steps are taken to prevent importation of goods bearing a false indication of origin. There are no requirements as to the compulsory marking of imported goods to show the country or place of origin, or to denote that they are foreign.

### SALVADOR

No laws are in force to prevent the importation or sale of goods bearing a false indication of foreign origin except as regards goods specially protected by registered trade marks. The sale of goods marked with a false trade mark is prohibited by law. Prosecutions are rare, but there would be no serious difficulty in procuring a conviction. Judicial fees as a rule are low, and lawyer's services not highly paid. No steps are taken to determine the place of origin of imported goods. There are no requirements as to the marking of imported goods to show the country or place of origin.

## SERVIA

There are no laws or regulations in force to prevent the sale or importation of goods bearing a false indication of origin. The law prohibits the false application to goods of trade marks registered in Serbia, and, in cases of infringement of trade marks not registered in Serbia, an action for damages may be brought, provided that injury can be proved.

## SPAIN

No special steps are taken to prevent the importation of goods bearing a false indication of origin; but the stipulations of the Convention of Paris (1883), the Arrangement of Madrid for the prevention of false indications of origin (1891), and the Additional Acts of Brussels (1900), are generally in force. The importation of goods bearing a false indication of Spanish origin or bearing falsified or imitated Spanish trade marks is prohibited by the Law of Industrial Property (1902). This law also prohibits the use of the name of a place of manufacture to designate a manufactured or natural product coming from another place. The sale of articles bearing a false Spanish trade mark is a punishable offense under the penal code. Foreigners, whose states are not members of the Industrial Property Union only possess trade mark rights in virtue of special treaties, and in cases where there are no treaties the principle of reciprocity is observed. At the demand of an interested party, a fine may be imposed on persons employing false indications of origin. Civil or criminal actions may be brought against infringers of Spanish trade marks. The cost of a civil action would be, at most, between £200 and £280; of a criminal action nil, as the states prosecute. Goods manufactured either in Spain or abroad may bear respectively the name or mark of a foreign or Spanish merchant, provided the indication of the country of manufacture is clearly visible and that the proper permission to use the name or mark has been obtained.

## SWEDEN

There are no laws or regulations in force prohibiting the importation of goods bearing a false indication of foreign origin; but the customs authorities have power to seize and confiscate imported goods bearing a false indication of Swedish origin. Foreigners may register and protect their trade marks in Sweden if their state has entered into a special agreement with Sweden on the subject. An action for the infringement of a trade mark can only be taken by the injured party. There are no requirements as to the marking of im-

ported goods to denote the place or country of origin, except that imported goods bearing indications suggesting Swedish origin must, to escape seizure by the customs, also bear a clear indication that they are of foreign production.

### SWITZERLAND

The Swiss government has made no special provisions for carrying out the Convention of Paris for the Protection of Industrial Property (1883), as modified by the Additional Act of Brussels of 1900, or for the execution of the Agreement of Madrid of April 14, 1891, with regard to the prevention of false indications of origin. The Federal Law of September 26, 1890, relating to the protection of trade marks and marks showing the origin of goods, forbids the assignment to a product of a false indication of origin; but the courts have never decided whether this law applies to false indications of origin generally, and in particular to cases provided for in Article 10 of the Paris Convention, and in Article 1 of the Arrangement of Madrid of 1891 for the prevention of false indications of origin, or merely to such as involve infringement of registered trade marks. The sale, offering for sale, or putting into circulation of goods bearing falsified or imitated registered trade marks is prohibited by the law. Civil or criminal action may be brought for offenses against the trade marks law by the owner of the trade mark infringed or by the defrauded purchaser of falsely marked goods. No special steps are taken to prevent the importation of goods bearing a false indication of origin. Imported matches must be marked with the name of the manufacturer's firm or his registered trade mark. Ordinance dated 29th January, 1909, enact that (i) certain foreign food products can only be imported into or sold or offered for sale in Switzerland if they bear an indication of the country of origin; (ii) certain other foreign food products can only be imported if accompanied by certificates of origin. Otherwise, there are no requirements as to the marking of imported goods to show the country or place of origin or to denote that they are foreign.

### TUNIS

It would appear that goods bearing a false indication of origin can be seized on importation or in the interior, or be prohibited from importation by the action of the customs, of the public prosecutor, or of parties liable to be injured, in accordance with the Arrangement of Madrid (1891), which Tunis has joined. The laws also afford protection against the fraudulent use of a trade name and the reproduction or imitation of trade marks registered in Tunis. In cases of false

indication of origin the public prosecutor should prosecute on the complaint of injured parties or of the representatives of foreign governments that have adhered to the Convention of Paris (1883) and the Arrangement of Madrid (1891); injured parties may also join in the public prosecution or sue before civil courts. No cost is entailed on complainants if the public prosecutor alone undertakes the prosecution. There appear to be no laws or regulations as to the marking of imported goods with an indication of the country of origin.

### TURKEY

There are no laws or regulations in force relating to the importation or sale of goods bearing a false indication of origin.

### UNITED STATES

Section 27 of the Trade Marks Act of 1905 prohibits the importation of articles bearing a false copy or imitation of a trade mark registered in the United States, or of a trade name recorded in the United States Treasury Department, or bearing a false indication of United States or foreign origin. The protection of the Act as regards trade marks and trade names is extended to foreigners resident in countries which give similar privileges to the citizens of the United States, provided they duly register their trade marks or record their trade names in the United States. Anyone unlawfully using a trade mark registered under the Act is liable to an action for damages at the suit of the owner. Only civil actions are possible. Representatives of foreign governments cannot initiate proceedings. Damages may also be claimed for the imitation of trade marks not registered in the United States and of other marks on the ground of unfair trade by the owner of such marks, who has to prove fraudulent intention. By Section 7 of the 1909 Tariff Act all articles of foreign manufacture or production capable of being marked, stamped, branded, or labelled without injury, must be marked, stamped, branded, or labelled in English so as to indicate their country of origin; and all packages containing imported goods must be marked, stamped, branded, or labelled in English so as to indicate their country of origin.

### URUGUAY

No legislation is in force prohibiting false indications of origin nor are importers held legally responsible for the correctness of indications of origin on imported goods. It is thought, however, that if a merchant sold goods falsely marked as of British origin, the purchaser could claim dam-

ages under the civil code. The legal procedure would be expensive and protracted.

### VENEZUELA

No law is in force to prevent the importation and sale of goods bearing a false indication of origin. The importation and offering for sale of goods falsely marked with trade mark registered in Venezuela are prohibited by law. Any purchaser of goods thus marked may bring a criminal action against their vender. The cost of bringing such an action is from \$75 to \$100.

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### PROTECTION TO TRADE MARKS IN CONSULAR COURTS

The unsatisfactory nature of this protection for many reasons is evident. In the first place, it is necessary that the mark to be protected shall be registered in the country of every consul whose aid it is desired to invoke for the protection thereof. Thus it becomes necessary for the owner of a trade mark, perhaps used only in China, to register it in a considerable number of European countries, to his great inconvenience and expense. Moreover, when the trade mark is infringed, he must pursue infringers of different nationalities in different courts, each before the consul of his own country. These several tribunals, of course, administer so far as possible the laws of their own countries; so that the relief to be obtained for the same infringement in the same market against different offenders will be as various as the nationalities of the infringers themselves. Furthermore, the consular courts cannot always be highly satisfactory tribunals before which to litigate a subject as difficult, and often as little understood, as that of a trade mark infringement. Additional difficulties arise, because of the relations between foreigners and natives, the latter of whom are of course beyond the reach of the consular jurisdiction.

The subject was under discussion before the Washington conference of the International Union for the Protection of Industrial Property, with the idea of embodying in the International Convention a substitute for the particular treaties relative to this subject.

Clauses were proposed which were substantially re-enactments of existing treaties, to which most of the adherents of the Union were parties. It was, however, their lack of novelty that prevented their adoption. It was objected that they offered no improvement over existing conditions. They provided for no just reciprocity, because certain of the coun-

tries of the Union had no consular tribunals. Thus a Swede would be able to prosecute infringement of his mark, by grace of the proposed addition to the convention, before an Austrian consul; while an Austrian would have no tribunal to which to resort against a Swedish infringer. Secondly, the requirement that any citizen of a country of the Union who would protect his trade mark in China must first register it in all the countries of the Union was considered to involve quite an unnecessary and unjustifiable expense. The final sense of the conference was that the international bureau at Berne should consider a project for creating in the territories where there exists a consular jurisdiction, and particularly in China, a system of registration that would afford a basis for the protection of trade marks before consular courts without the necessity of registration in the country whose consular jurisdiction was invoked.

The result of the consideration given to this problem by the international bureau is a subject of an article in *La Propriété Industrielle*. Great difficulties were recognized, arising alike out of the principles of international law and the practical problems of administration. How to extend the benefits of the proposed system to the citizens of those countries, members of the Union, whose consuls did not exercise an extra-territorial jurisdiction, is one of the initial difficulties. Then as to the registrations themselves, the question arises whether they should have legal effect in European countries or only in China, and whether they should be considered as declarative of property in the marks or as attributive of property thereto. Finally, the formalities of registration, the cost and duration thereof and whether registration should be made at one central bureau or in several places, were matters to be considered. The bureau is of the opinion that the interests at stake are of sufficient importance to justify an innovation of this character, because the number of Europeans established in these countries, and the extent of their business, are constantly growing. Moreover, manufacturers and traders in Europe and in the United States find in the East important markets and want protection there against the infringement of their trade marks. Therefore, it is deemed expedient to facilitate the repression of these abuses, by means of a common agreement, until the time when the native powers themselves shall be in a position to establish a normal regime of their own.

After mature deliberation it has seemed possible to effect an agreement adapted to attain this result, without too great complications and without impairing the rights and prerogatives of the contracting states. The proposed basis of such an arrangement is briefly: First, a uniform code governing trade marks and kindred matters to be made the subject of

treaty agreement between the members of the Union, and to be enforced in the consular courts of the contracting states, in place of the divergent codes in force in the several states. Secondly, a plan for registrations, whereby marks might be deposited at any consulate, to be by that consulate reported to a central bureau, there to be registered, published in a special organ and reported to the consulates designated by the governments, so that each should possess a complete collection of the marks registered under that arrangement.

This is, of course, the international system of trade mark registration now in operation between certain countries, adopted in every detail for this new purpose.

The operation of the system should be somewhat as follows: A Belgian, for example, carrying on business in the Orient, would deposit his mark at the Belgian consulate in Constantinople, which would register it at the central bureau and that in turn would communicate it to the respective consulates. When a case of the infringement by a member of the Union arose at Canton, the registrant would bring the infringer before the consular court to which the party is amenable and, fortified with a certificate of registration, he would claim and obtain the benefit of the remedies which the terms of the international arrangement made available. (*La Propriété Industrielle* 1911, p. 172.)

As this plan was evolved for the protection of marks primarily in China, it is possible that the establishment of a Mongolian republic will pave the way for such internal legislation as will render useless the plan outlined. If not, the practical difficulties in the way of its adoption may safely be reckoned on to postpone indefinitely its successful installation.

## RED CROSS

At the conference of the Red Cross in Geneva, a convention was agreed upon providing that each of the countries thereto should do ail in its power by legislation to prevent the use of the Red Cross for any sort of commercial purpose. Officers of the National Red Cross Society maintain that the use of their insignia in the United States, by persons or corporations which were not using it in 1906, is a direct violation of the law already referred to, and that no further legislation is necessary for the purpose of preventing the use that is now becoming so common.

Section 4 of the Act of January 5, 1905, incorporating the American National Red Cross, is as follows:

That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or rep-



resent or pretend himself to be, a member of, or an agent for, the American National Red Cross, for the purpose of soliciting, collecting or receiving money or material; or for any person to wear or display the sign of the Red Cross, or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of, or an agent for, the American National Red Cross. Nor shall it be lawful for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purpose of trade or as an advertisement to induce the sale of any article whatsoever. If any person violates the provisions of this section, he shall be guilty of a misdemeanor and shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. The fine so collected shall be paid to the American National Red Cross.

### THE MERCHANDISE MARKS ACT

The present British Merchandise Marks Act was passed in 1887 and was a re-enactment of an act passed in 1862.

The Act of 1887 can be regarded, first as a criminal act. It provides that any person shall be guilty of an offense, punishable on indictment or on summary conviction by fine or imprisonment, who either forges a trade mark by making or imitating it without the consent of the proprietor, or by falsifying any genuine mark; or falsely applies any trade mark to goods, by applying it, or an imitation of it, without the consent of the proprietor; or applies to goods any false trade description, that is, a description or indication as to the number, quantity, measure, etc., or the place or country of origin of the goods, or the mode of manufacturing them, or their material, or as to their being the subject of an existing patent, privilege, or copyright, which is false in a material respect; or sells or exposes, or has in his possession for sale, or any purpose of sale or manufacture, any goods to which a forged trade mark or false trade description is applied, or to which any trade mark, or imitation of a trade mark is falsely applied. A criminal intention on the part of the person charged is a necessary element of each of the above mentioned offenses, but the burden of proving that he has acted with the consent of the proprietor of the trade mark, or without intent to defraud or otherwise innocently, as also the burden of establishing any of the special excuses allowed by the act, is cast upon the person charged as soon as it is established that he has done any of the acts which, coupled with such criminal intention and in the absence of these excuses, bring his case within the definition of an offense under the statute.

Secondly, it can be regarded in part as a customs act, as the act, moreover, forbids the importation of goods by means of or in relation to which an offense against it has been committed, and also of all goods of foreign manufacture bearing any name or trade mark being or purporting to be that of a manufacturer or trader within the country, unless it be accompanied by a definite indication of the country where the goods were made or produced. It contains also some special provisions with regard to the marking of watch cases.

Several of the British Colonies and Independencies have merchandise marks acts, although they have no trade mark registration act, which indicates that trade marks are recognized. There are trade mark acts in some of the British Colonies and they are practically the same as the British Trade Marks Act; and the merchandise marks act in all the colonies is similar to the British Merchandise Marks act.

#### EXTRACT FROM "MERCHANTISE MARKS ACT, 1887"

An act to consolidate and amend the law relating to fraudulent marks on merchandise. (23rd August, 1887.)

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Merchandise Marks Act, 1887.

2. (1) Every person who

(a) forges any trade mark; or

(b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or

(d) applies any false trade description to goods; or

(e) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark; or

(f) causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offense against this Act.

(2) Every person who sells, or exposes for, or has in his

possession for, sale or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

(a) That having taken all reasonable precautions against committing an offense against this Act, he had at the time of the commission of the alleged offense no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(b) That on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) That otherwise he had acted innocently;

be guilty of an offense against this Act.

(3) Every person guilty of an offense against this Act shall be liable—

(i) on conviction on indictment, to imprisonment, with or without hard labor, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(ii) on summary conviction to imprisonment, with or without hard labor, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labor, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and

(iii) in any case to forfeit to her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offense has been committed.

(4) The Court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the Court thinks fit.

(5) If any person feels aggrieved by any conviction made by a court of summary jurisdiction he may appeal therefrom to a court of quarter sessions.

(6) Any offense for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a Court of Summary Jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offense under this section before a court of Summary Jurisdiction shall, on appearing before the court, and before the

charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

A person shall be deemed to forge a trade mark who either—

(a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or

(b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

A person shall be deemed to apply a trade mark or mark or trade description to goods who—

(a) applies it to the goods themselves; or

(b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or

(c) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

(d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

No prosecution for an offense against this Act shall be commenced after the expiration of three years next after the commission of the offense, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Act; be it therefore enacted as follows:

(1) All such goods, and also all goods of foreign manufacture, bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and, subject to the provisions of this section, shall be included among goods prohibited

to be imported as if they were specified in section forty-two of the Customs Consolidation Act, 1876.

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations, under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs may from time to time make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Where there is on any goods a name which is identical with or a colorable imitation of the name of a place in the United Kingdom, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.

(5) Such regulations may apply to all goods, the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offenses in relation to such goods.

(6) The Commissioners of Customs in making and in administering the regulations and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Commissioners of her Majesty's Treasury.

(7) The regulations may provide for the informant reimbursing the Commissioners of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(8) All regulations under this section shall be published in the "London Gazette" and in the "Board of Trade Journal."

(9) This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.

(10) Section two of the Revenue Act, 1883, shall be repealed as from a day fixed by regulations under this section, not being later than the first day of January, 1888, without prejudice to anything done or suffered thereunder.

**MERCHANDISE MARKS ACT, 1891**

(54 Vict. c. 15)

*An Act to amend the Merchandise Marks Act, 1887.*

(May 11, 1891)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The customs entry relating to imported goods shall, for purposes of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

2. (1) The Board of Trade may, with the concurrence of the Lord Chancellor, make regulations providing that in cases appearing to the Board to affect the general interests of the country, or of a section of the community, or of a trade, the prosecution of offenses under the Merchandise Marks Act, 1887, shall be undertaken by the Board of Trade, and prescribing the conditions on which such prosecutions are to be so undertaken. The expenses of prosecutions so undertaken shall be paid out of moneys provided by Parliament. (2) All regulations made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act, and shall be published under the authority of Her Majesty's Stationery Office. (3) Nothing in this Act shall affect the power of any person or authority to undertake prosecutions otherwise than under the said regulations.

3. This Act may be cited as the Merchandise Marks Act, 1891, and the Merchandise Marks Act, 1887, and this Act may be cited together as the Merchandise Marks Act, 1887 and 1891.

**MERCHANDISE MARKS (PROSECUTION) ACT, 1894**

*An Act for enabling the Board of Agriculture to undertake Prosecutions in certain cases under Merchandise Marks Act, 1887.*

(20th July, 1894.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The powers exercisable by the Board of Trade under the

Merchandise Marks Act, 1891, with respect to the prosecution of offenses under the Merchandise Marks Act, 1887, may in cases which appear to the Board of Agriculture to relate to agricultural or horticultural produce be exercised by the Board, and in such cases the former Act shall apply as if the Board of Agriculture were referred to therein instead of the Board of Trade.

2. This Act shall not extend to Ireland.

3. This Act may be cited as the Merchandise Marks (Prosecutions) Act, 1891, and shall be read with the Merchandise Marks Acts, 1887 and 1891.

### CONSOLIDATED INSTRUCTIONS

Custom House, London, 26th February, 1900.

The following consolidation of the General Orders and other instructions on the subject of the Merchandise Marks Act of 1887, is issued for the information and guidance of the officers.

Goods imported into the United Kingdom which do not bear any marks whatever, either on the goods themselves or on the coverings containing them, are not subject in any way to the Act, and therefore need not bear any statement or indication, such as "Made abroad," "Made in Germany," etc.

The goods, therefore, prohibited under the Act to which the attention of officers is called may be classed under two heads:

(A) Goods with marks which suggest British origin and require, in order to legalize their importation, some counteracting qualification.

(B) Goods with marks prohibited on other grounds.

It is to be noted that by Sec. 1 of the Merchandise Marks Act, 1891 (54 Vict. c. 15), the customs entry relating to imported goods shall, for the purpose of the Merchandise Marks Act, 1887, be deemed to be a trade description applied to the goods.

(A) *Goods with Marks Suggesting British Origin.*

Goods falling under (A) may be again subdivided:

(a) Goods, whether manufactured or raw, having applied to them any description, figures, words, or marks, or arrangement or combination thereof, which by being or including, either expressly or by reference, the name of a place in or a part of the United Kingdom (e. g., "Irish"=" of Ireland"), or in any other way, constitute a statement or other indication, direct or indirect that the goods were made or produced in the United Kingdom.

(b) Goods of foreign manufacture bearing any name or mark which is, or purports to be, the name or trade mark of a manufacturer, dealer, or trader in the United Kingdom.

(c) Goods, whether manufactured or raw, having applied

to them a generally used trade description, which in indicating a particular class of goods or method of manufacture, includes expressly the name of a place in, or a part of the United Kingdom, and is thereby calculated to mislead as to the place of the manufacture or production of the goods.

(A) (b) relates to manufactured goods, and not to entirely raw goods, and the word "purports" is to be understood as referring to any name or names reasonably suggesting a British manufacturer, dealer or trader, whether the name is or is not known to the officer; or as referring to a trade mark, not being merely matter of decoration or ornament, which reasonably suggests itself as British by containing English wording, or other representation specially designed to convey, and, in fact, conveying an impression of British manufacture.

As to (c) that the words "trade description which in indicating a particular class of goods or method of manufacture, includes the name of a place in or a part of the United Kingdom, and is thereby calculated to mislead" mean such terms as Kidderminster Carpets, "Balbriggan" on hosiery, or "Shetland" on shawls, and the like, which, although they might be held to be merely phrases descriptive of method of manufacture, are yet calculated to mislead as to place of origin. Where, however, such description has become associated with a particular class of goods in a manner practically to preclude any probability of deception, as "Portland Cement" and "Bath Chaps," the description need not be accompanied by a statement of the country of actual production. This applies also to the case of colonial names describing, for instance, classes of wool, etc., where, although the names are British, the circumstances preclude mistake.

All such goods as above specified are to be detained and reported to the Board unless they are qualified as follows:

As to (a), by a definite indication of make or production out of the United Kingdom.

As to (b), by a definite indication of the country in which the goods were made.

As to (c), by the name of the country in which the goods were actually made or produced, with a statement that they were made or produced there.

With regard to (a), "Made Abroad" will be generally sufficient. With regard to (b), the name of the country is a sufficient indication, without the words "made in," if the name or trade mark only appears. Where there is an address, as "John Smith, Sheffield," then the qualification must be "Made in Germany," or similar wording; "Germany" alone would not counteract "Sheffield"; (c) requires the full statement "Made in Germany."



Officers are not expected to decide whether goods were actually made or produced in the country from which in the qualification they are stated to come; the name of *some* foreign country, or of some place in a foreign country is sufficient.

If the goods bear the name of a place identical with, or a colorable imitation of, the name of a place in the United Kingdom, the name should be accompanied by the name of the country in which the place is situated. Thus, Boston, in Massachusetts, should be accompanied by the name "United States," or by the initials "U. S. A.," or even by the abridgment "Mass."

The use of the English language applied as a description to goods imported from non-English speaking countries is not, simply *as* language and where not involving the name of any place in, or part of, the United Kingdom, a "direct," and, as a rule, is not to be regarded as an "indirect," indication of British origin. Where, however, there is good ground for considering that the use of the language was specially designed to convey, and does in fact convey, an impression of such origin, then the language will be a description within (a) under heading "Goods with Marks Suggesting British Origin."

(B) *Goods Prohibited on Other Grounds.*

Goods prohibited on grounds other than marking suggestive of British origin are those which, whether manufactured or raw, have applied to them a false trade description.

(a) As to the place or country in which they were made or produced;

(b) As to trade marks or names so as to constitute forgery;

(c) As to number, quantity, measure, gauge or weight, and mode of manufacture or material;

(d) As to being the subject of any existing patent, privilege, or copyright.

As to (a), this relates, of course (British origin having been dealt with above), to questions between two foreign countries; that is to say, to goods with marks indicating make or production in a place or country which is not that in which the goods were made or produced. The Act does not specify particularly what is to be the qualification here; but if the mark indicates, expressly, or by reference, a place or country not that, in reality, of the make or production of the goods, there must be a definite qualification to the effect that the goods were not made or produced in the place or country indicated; or, a definite indication of the place or country in which the goods were made or produced.

A mark which, though not naming, *includes* the name of a place or country, is to be held as naming such place or country. For instance, a wine, the produce of Germany, and described as

“Port” or “Sherry” (which words include the names of the places Oporto and Xeres) should have that description accompanied by the statement “produced in Germany,” or should be described as “German Port” or “Australian Sherry,” etc. Such a mark as “Lancashire Swedish” on Swedish iron, where the qualifying word follows the misleading name, may be admitted. As in marks suggesting British origin, exception to this rule is made in cases where the name of a place in a trade description is indicative merely of the character of the goods, and is not calculated to mislead as to the country of origin. The description “Brussels Carpet” is an exception of this kind.

For judging between two foreign countries the Act provides that, in the absence of proof to the contrary, the port of shipment of goods shall be *prima facie* evidence of the place or country in which the goods were made or produced; and this rule the officers can, generally, act upon. Where, however, the port of shipment is merely an ordinary trading route from some inland country, as Rotterdam or Antwerp with respect to Germany, or Hamburg with respect to Austria, the officers may, if they have no reason to doubt the good faith of the importer, accept the statement that the goods are the make or produce of the inland country.

The use of language of one foreign country on goods of another must not be viewed more strictly than its use in cases indicating British origin. The use of a certain language is allowed freely to *all* countries when, by custom, that language is usually applied to such goods: e. g., Spanish on tobacco and cigars, when the recognized words are applied only to color, shape, size, and the like; or French on sardines, when confined to the words “Sardines à l’huile,” without any additional French description.

The forging of a trade mark is the application to goods of any figure, words, or marks, or arrangement or combination thereof, reasonably calculated to lead persons to believe that the goods are the manufacture or the merchandise of some person other than the person whose manufacture or merchandise they really are; and this includes the name or initials of a person. The figures, words, or marks applied need not be an actual trade mark, or actual name or initials, provided they are a colorable imitation of the mark, name, or initials of a person carrying on business in connection with goods of the same description, and are used without his authority.

### UNFAIR COMPETITION

No trader has a right to pass off his goods as though they were the goods of another trader.

The majority of unfair competition cases are instances of attempts by the defendant to pass off his goods as those of his

rival. There are cases, however, of attempts of defendants to pass off not their goods as those of the rival, but the rival's goods as their goods and goods of third persons as the goods of the plaintiff. These are just as much cases of unfair competition—passing off cases—as the more common sort. (Nims on Unfair Competition, Sec. 15.)

Unfair competition consists essentially in the conduct of a trade or business in such a manner that there is an express or implied representation that the goods or business of the one man are the goods or business of another.

Unfair competition may be defined as passing off or attempting to pass off upon the public the goods or business of one man as being the goods or business of another. (American and Eng. Enc. of Law, Second Ed.)

It has long been accepted as a principle governing cases of unfair competition in trade, arising from simulation of packages, labels, or descriptive designations, where no technical trade mark is involved, that there can be no remedy without proof of a fraudulent purpose on the part of the defendant. Perhaps the fact that so high an authority as the United States Supreme Court has approved the principle, would seem to make it a finality in the law of this subject. Mr. Chief Justice Fuller, of that Court, said:

“The deceitful representation or perfidious dealing must be made out or be clearly inferable from the circumstances.” (Lawrence Mfg. Co. vs. Tennessee Mfg. Co., 138 U. S., 537.)

Nevertheless we venture to believe that this is not the principle which will ultimately control the decisions of the courts in cases of this kind. On the contrary, the only logical and rational principle is a much broader one, to-wit, that irrespective of any intent whatever, no man has the right to sell or make possible the sale of his goods to purchasers who seek and believe they are getting the goods of a rival.

The principle has been broadly stated by the English courts, and there are remarks in the opinions of several cases in the United States Courts which enunciate the principle with equal generality. Nevertheless we know of no case until the recently decided “Van Houten Cocoa Case” (Van Houten, et al., vs. Hooton Cocoa & Chocolate Co., 130 Fed. Rep., 600) that has been put squarely and unequivocally upon this basis, holding that the question of intent was quite immaterial.

The complainants in this case had for many years been engaged in the manufacture in Holland and in the sale in the United States and elsewhere of a fine grade of cocoa, which they put out under the name of “Van Houten's Cocoa.” In the fall of 1897 the defendant corporation was organized and commenced the manufacture and sale under the name of “Hooton's” of a cocoa which it sold at about half the price of complainants'

goods. One Hooton was an incorporator and the first president of the defendant, but subsequently retired from the company.

There was no similarity of appearance between the goods of the complainants and those of the defendant. On this point the court said:

"Neither in size, shape, coloring nor ornamentation is there any imitation of the packages of the complainant."

Nor was there any proof of intent to deceive purchasers or to sell their goods as those of complainants. The court said further:

"Neither in the inception of the defendant company, including the choice of a name, nor the display of their goods or in the conduct of their business, am I able to discover any intent to infringe the rights of the complainants or to profit by the good will which they have built up."

Nevertheless, it appeared that by reason of the similarity in the names under which the two products were marketed, confusion had arisen and defendant's goods had been purchased by customers who believed that they were goods of complainants. Upon this ground the court granted a decree against the defendant, with an injunction providing that

"They shall not use the word 'Hooton' to designate their cocoa, except as they clearly and unmistakably state in the same connection that such cocoa is not the Van Houten cocoa manufactured by the complainants, Van Houten & Zoon."

Although the opinion is undoubtedly right in principle and in line with the development of the law upon this subject, it is that of a court of first instance, and is subject to review on appeal. It is therefore of interest and importance rather for what it indicates of the tendency of judicial opinion than as furnishing a guide of final authority in cases of this nature.

### LIABILITY OF MANUFACTURER

Plaintiffs, English soda water manufacturers, had for twenty-five years sold their goods under a peculiar label which was attached to the neck of the bottle. This label was of a chocolate color with a red medallion in the center and had printed on it in large white characters the words "Schweppes' Soda Water." The defendant began to sell soda water put up in bottles bearing also a chocolate colored label with a red medallion in the center upon which were printed in white letters "Gibbon's Soda Water." In determining that there was no such similarity between these labels as was calculated to deceive customers, the English Court of Appeal based its decision entirely upon what would appear to a purchaser who examined the labels. It was claimed by the plaintiff that in serving a customer, the seller of the defendant's goods might pass them off as plaintiff's by concealing that por-

tion of the label which bore the defendant's name and availing himself of the similarity in the general appearance of the remaining portions of the label. The court, however, held that the possibility of such deception could not form the basis of an action by the plaintiffs; that such deception as occurred was the deception of the seller of the article and not deception for which the defendant was responsible; that the defendant's label if fairly used was not calculated to deceive the customer and its use could not be enjoined because of the fact that it might be fraudulently used in such a way as to accomplish deception. (Schweppes', Ltd., vs. Gibbon, XXII, Rep. Pat., etc., Cas., 113.)

This same question was under discussion in the House of Lords in a somewhat earlier case in which it had been repeatedly asked of the witnesses upon the trial whether the similarity between the goods were such as would enable a dishonest trader to pass off the one for the other, and the witness said "Oh yes, it could be done very easily." The court said that for such fraud the defendants were in no way responsible and that the substitution by dishonest tradesmen of one article for another, which did not resemble it to such an extent as would be calculated to deceive, was a matter that had no bearing upon the plaintiff's cause of action. (Payton & Co., Ltd., vs. Snelling, XVII, Rep. Pat., etc., Cas., 629 [635].)

### INTENT AS AN ELEMENT

The Landlords' Protective Bureau, a Chicago corporation, brought suit to restrain the defendants, a copartnership, proprietors of "Campe's Commercial Agency," from advertising their "Landlords' Protective Department," upon the ground that their use of the latter term caused confusion between the business of the defendants and that of the plaintiff.

The plaintiff was organized in 1886 for the purpose of keeping a directory of information regarding tenants, their responsibility and desirability, to furnish information of this nature to landlords and to assist the latter in evicting undesirable tenants. The defendants started the "Landlords' Protective Department" in connection with their business, in the year 1901, for the same purposes and for the additional purpose of furnishing legal advice to landlords in all matters of dispute between themselves and their tenants. It was denied by the defendants that, at the time they established the department in question, they had any knowledge of the plaintiff corporation or that they so named it with any fraudulent intent to injure the plaintiff's business. It appeared in evidence, that numerous of the defendants' subscribers had applied at the office of the plaintiff for assistance, under the impression that the plaintiff's office was a branch of the defendants'. It was also testified that a solicitor of business for the defendants had stated to various persons that the plaintiff's business

was a part of the defendants' business. It was, however, shown by the defendants that they had forbidden their agents to make such representations, as soon as they became aware of the plaintiff's existence. The court said:

"We think the true ground upon which the jurisdiction of a court of equity to restrain the defendants as prayed in this appeal rests, is that the name assumed by the defendants is so similar to that of the complainant as to mislead and confuse the public minds as to the identity of the business in which the two parties are engaged. \* \* \* The 'Landlords' Protective Bureau', and the 'Landlords' Protective Department' are manifestly so similar as to almost necessarily lead to complication and confusion in the business of the two parties and it is of no importance in this view of the case, that the defendants had no knowledge of the existence of complainant until after they had organized their rival business or had no intention of injuring complainant. \* \* \* We think the undisputed fact that the similarity of names resulted in embarrassment and injury to complainant, justified the conclusion of the Appellate Court, and its judgment will, accordingly, be affirmed." (Koebel vs. Chicago Landlord's Protective Bureau, 71 N. E. Rep., 362.)

### SUBSTITUTION OF GOODS

The defendant, a corporation, owning and conducting several wine and liquor stores in the city of New York, advertised for sale Hostetter's Bitters, at the price of three dollars per gallon. The bitters manufactured by the Hostetter Company, the complainant, are made under a secret process and sold in bottles at the price of four and one-half dollars per half dozen, containing one gallon. The complainant has never sold its bitters in bulk or otherwise than in bottles at the price named. Upon application to the defendant's stores for Hostetter's Bitters, customers were supplied with a certain liquor contained in demijohns at the price of three dollars per gallon, and in some cases, at the request of the customers, the liquor was placed in Hostetter bottles having the name Hostetter blown into the glass, but not bearing any label. The defendant's counsel claimed that there was no infringement of the complainants' trade mark, because it was not used in the sale of the goods, and no attempt to deceive the purchasers, because the bitters were sold in bulk and were not marked as Hostetter's Bitters. It being clear, however, that the goods were advertised and were sold as Hostetter's Bitters, it was held that a cause of action for unfair competition was made out and that complainant was entitled to an injunction and to a reference to compute the damages, if any, which it had suffered by the sale of the bitters. (Hostetter Co. vs. Gallagher Stores, 142, Fed. Rep., 208.)

## IMITATION OF ADVERTISEMENTS AS A GROUND OF ACTION

The extent to which the imitation or copying of others' forms of advertising is legitimate was lately considered in the High Court of Justice, Chancery Division, in England. The plaintiff had been carrying on business as a seedsman in London and had devised a plan for advertising his goods by the insertion in a large number of papers of a stereotype advertisement, containing letter press and pictures of objects that he offered as prizes for the sale of a certain number of packets of his assorted seeds. The advertisement contained all the details of the offer surrounded by a kind of framework of cuts of objects given for prizes. The advertisement was not copyrighted nor registered as a design.

In March, 1906, the defendant, a general merchant, began the sale of seeds by the use of an advertisement practically the same as that of the plaintiff, and the terms were even more favorable than those of the plaintiff. In every other respect the letter press, pictures and arrangement of the printing as a whole, were practically identical with those of the plaintiff.

The plaintiff commenced an action for injunction to restrain the defendant from advertising or representing the seeds sold by them to be the seeds of the plaintiff, and from causing it to be believed that the business carried on by the defendant was the plaintiff's business. Upon a motion for a preliminary injunction the plaintiff produced no evidence to show association in the minds of the public of his form of advertisement with his business, or to indicate that anyone had been deceived by the similarity in the advertisements into believing that the defendant's business was that of the plaintiff. The defendant on his part admitted that being impressed with the attractiveness of the plaintiff's advertisement, he instructed his advertising agent to produce it with the changes mentioned.

The court without hearing argument in behalf of the defendant, pronounced the suit an unwarranted attempt to restrain rivalry in trade and as going far beyond what had even been done in any case. While recognizing the individuality of the advertisement originated by the plaintiff and its effectiveness, in the inducements which it offered, to stimulate the sale of the plaintiff's goods, the court said, because the defendant, being struck by the ingenuity of the advertisement, had adopted the same method, he did not for that reason transgress any of the plaintiff's rights. Even the copying of the plaintiff's language was no wrong. Without passing upon the business morality of the defendant's conduct, the court held that there was nothing in it that was open to legal objection, no property right of the plaintiff being invaded.

By way of illustration, the court said that the case was exactly the same as if the defendant had opened a business alongside of the plaintiff, and advertised to sell the same goods as his neighbor, but of better quality and at less price. To do so might be of questionable taste, but it would be a mere matter of rivalry in trade. No doubt the defendant was in one sense injuring the plaintiff's business, but so far as he was able to do so along proper lines, his object was a creditable one. He properly wished to get the plaintiff's business and the plaintiff wished to prevent him from getting it. The question was one of method merely, and the methods complained of were not such as to come within the censure of the law. (*Wertheimer vs. Stewart, Cooper & Co.*, XXIII Rep. of Pat. etc., Cases, 481.)

### DUPLICATION OF TELEPHONE NUMBER

The curious applications, which it is sometimes sought to make of the doctrine of unfair competition are evidenced by a case in the Supreme Court of Utah, decided in December, 1906. The plaintiff Telephone Co. for years had used the number 888 as the call for the "Trouble Department." The defendant, a late rival, established a "Trouble Clerk," also with the call 888 for its system. The plaintiff claimed that its subscribers, in case of difficulty with their service, sometimes by mistake used an instrument of the rival system to give information of the difficulty, and because of the similarity in the calls for the corresponding departments of the two companies, the information went to the complaint department of its rival instead of its own; that upon receipt of such information, the defendant sent solicitors to the subscriber, to induce him to change his telephone and adopt that of the defendant. The court, however, held that such instances if they occurred, were due to the carelessness of the subscriber in using a telephone of the wrong system, and the judgment dismissing the complaint was affirmed. The court expressed its views of the controversy in the following language:

"While it may be that the respondents do not, in all things, conform to the Golden Rule in conducting its business, we are not convinced that it violates any legal or equitable rules. In such event an appeal should be made to the moral rather than the legal code. Modern business seems not to be conducted strictly in accordance with the moral code, and if we assumed the authority to issue an injunction every time we thought this code was being violated, it would not be long before there would be no business transacted, except court business, and that would continue not so much for the reason that it conformed to the code, as it would, as a means to direct, regulate and control all business affairs." (*Rocky Mt. Bell Tel. Co. vs. Utah Ind. Tel. Co.*, 88 Pac. Rep., 26.)



## MISUSE OF ADVERTISEMENTS

In the Special Term of the Supreme Court in Brooklyn, Justice Maddox lately had occasion to pass upon a form of unfair competition, which we do not recall having seen the subject of prior adjudication. The Kellogg Toasted Corn-flake Co. widely advertised the picture of a young lady combined with the admonition "Wink at the Grocer and see what you will get. K. T. C." There was nothing in the advertisements to show to what goods they were meant to refer, nor to indicate the name of the manufacturer from whom the goods emanated. They were meant merely to arouse the public curiosity and attract attention to later advertisements that should disclose the goods advertised and the manufacturer.

Before the Kellogg Co. had, however, issued their second advertisements and while the minds of the public were in the condition of aroused curiosity that was excited by the preliminary notices, the American Rice Co. issued advertisements, the purport of which was such as to cause the reader to believe that the American Rice Co. was responsible for the first display and that its goods were the ones meant to be advertised thereby.

Thereupon the Kellogg Co. brought suit to restrain the use of these advertisements, on the ground of unfair competition, in that the defendant was misappropriating the good will created by the plaintiff and inducing the public to buy its goods referred to in the plaintiff's advertising. Justice Maddox granted a preliminary injunction, taking the view that the action of the defendant in appropriating the benefit of the plaintiff's advertising was an actionable wrong.

The courts have heretofore granted injunctions to restrain such acts as cause or are calculated to cause a purchaser familiar with one brand of goods, and who seeks to procure more of the goods he has had before, from being misled into buying another brand, believing it to be the brand he seeks. This was the original application of the theory of unfair competition, and presupposed a familiarity on the part of the purchaser with the goods he sought to purchase.

The doctrine was advanced in liberality when the courts came to take account of the purchaser who had never seen the goods themselves, but had merely been made familiar with them by advertisements, or by the reputation which they had among those who used them, and whose acquaintance with the goods was limited to the name, or mark, or symbol by which the goods were commonly known. It has long been recognized that the manufacturer is entitled to be protected against the deception of this purchaser as well as against the deception of him who had previously bought and used the goods.

The foregoing case carries the doctrine to a length which does

not appear illogical but is somewhat startling, as it recognizes the right of the manufacturer to be secured against the deception of a prospective purchaser who never used the goods before, never saw them, and never heard of them, either by reputation or through advertisements, but who had merely had his curiosity excited by an advertisement which he is led to believe was the advertisement of a concern other than that which in fact issued it.

If this decision is to be sustained, there can be nothing in the fact that in this particular instance the goods sold by the two parties were of a similar character. It cannot be seen why the reasoning would not equally apply had the American Rice Co. seized the opportunity to advertise a pickle, or a brand of tea, a cigar or a rat poison, instead of a cereal, in a measure similar to "Kellogg's Toasted Cornflakes."

### USE OF ONE'S OWN NAME

The Circuit Court of the United States for the Western District of Pennsylvania on July 20, 1906, awarded a somewhat too sweeping injunction against the right of an individual to make use of his own name in business. The complainant and its predecessors were for many years engaged in the manufacture of artificial legs, having built up a large business and acquired a valuable good will for the article. The evidence clearly showed that their goods were commonly known under the name of "Rowley's." The defendant, a brother of the originator of the business, had been in the employ of the complainant and was sent, in 1904, to open an agency for the complainant in Pittsburg. He remained in charge of the agency until April, 1905, when his agency was terminated, and thereupon, he opened an establishment himself in Pittsburg and began the manufacture and sale of artificial limbs on his own account. The proof showed that the defendant clearly appreciated the value of the name in connection with the business and knew that the purchasers of such articles were often ignorant and inexperienced and could readily be deceived as to the identity of the goods which they were getting. Instances of actual and intentional deception by the defendant of complainant's prospective customers were shown.

The court properly said that if the defendant's name were not Rowley no court for a moment would permit him to use that name, which had already gained a valuable trade significance as designating the goods of another maker. When the fraudulent purpose to filch the trade of another is shown, the fact that it is attempted under the guise of using one's own name does not make it any the less wrong. As an abstract proposition, the court said, every person has the right to use his own name, but when the use of such name is but a cloak to cover an intended

fraud upon the rights of others, the wrong-doer has himself and not the law to blame for placing a limitation upon his right to use that name. From these principles the court concluded that nothing short of a total prohibition of the name "Rowley" in connection with the manufacture and sale of artificial limbs would secure to the complainant that complete protection and preservation of its property and its trade name and good will, to which under the law it was entitled. (*J. F. Rowley Co. vs. Rowley*, 154 Fed. Rep., 744.)

It is hardly necessary to point out that the scope of this injunction is broader than the principle laid down by the United States Supreme Court in the *Remington* case, which does not appear to have had the consideration of the court in this instance and that the injunction should have been limited in scope to enjoining defendant from the use of his name in such manner as to deceive. The use of his own name in any form whatever can not properly be enjoined. (*Howe Scale Co. vs. Wyckoff Seamans & Benedict.*)

### IN TITLE OF A PERIODICAL

Upon a motion for a preliminary injunction, made before the Special Term of the Supreme Court in the City of New York, in December, 1908, an attempt was made by the publisher of a periodical known as "The Motor Boat" to forestall the issuance of a rival sheet under a similar title. The plaintiff's periodical has been published since the year 1904. The defendant had announced that it was about to begin the publication of a magazine under the name "Motor Boating" or "Motor Boat Magazine." Its announcements were perfectly clear and emphatic in showing that its publication was an entirely new one, about to appear for the first time. The coloring and general design of the covers upon the publications were so different that one could not be mistaken for the other. The court took the view that the expression "Motor Boat" had come into general use, even prior to the year 1904, to designate boats propelled by motors, and that there was nothing in the facts or circumstances which could justify any claim on the part of the plaintiff to monopolize these words for its publication, but, so long as the defendant made no unfair use of them and did not cause its publication to be mistaken for the plaintiff's, the plaintiff was without any cause to complain. (*The Motor Boat Publishing Co. vs. The Motor Boat Co.*, N. Y. Law Journal, December, 1907.)

### THE "VELVET GRIP" LITIGATION

The manufacturers of the "Velvet Grip" hose supporter have been engaged in some very interesting litigation, involving a peculiar instance of unfair competition in the sale of goods made

in imitation of their own. It appears that a prominent feature of the articles manufactured by them is a moulded rubber button, to the use of which their article owes its superiority. Several parties have lately found it worth while to imitate these articles, using a wooden button painted in a greyish color, to imitate rubber, in such a way that it is possible for them to be passed off as the genuine "Velvet Grip" rubber button hose supporter. The Circuit Court of the United States for the District of Massachusetts, in October, 1907, granted a preliminary injunction against one of these infringers. (George Frost Co. vs. Estes & Sons, 156 Fed. Rep., 677.)

In another case in the Circuit Court of the United States for the Southern District of New York, Judge Lacombe has granted an order in terms directing that, should the defendant, pending the final hearing in the suit, continue to sell the hose supporters with the wooden buttons, made in imitation of rubber as shown in the exhibits, he must affix a notice of reasonable proportions and so as to be readily seen upon the boxes, stating that the buttons are made of wood.

In the third case against a manufacturer of hose supporters in New York City, we are informed that a decree for an injunction was taken by consent. A fourth suit in the Circuit Court of the United States for the Southern District of New York was decided March 6, 1908, on motion for preliminary injunction, such injunction being granted—

"\* \* \* enjoining and restraining the defendants until the further order of this court from directly or indirectly making or selling any garters or hose supporters with wood buttons painted or otherwise artificially colored in imitation of rubber buttons."

The line of decisions, mentioned above, is one of extreme interest. Although the facts involved are novel, nevertheless, the rights of the parties appear to be quite clearly defined. Inasmuch as the rubber button is a feature of the genuine article to which principally it owes its value, while the painted wooden button is a clear fraud, deliberately designed to imitate the other and to profit by the business built up by the complainant, and as it can be shown that in many instances, by reason of the imitation of this particular feature of the article, the imitative goods have been passed off on intending purchasers as genuine, no question should remain as to the rights of the plaintiff to injunctive relief.

### PROTECTION TO THE NAME OF A CITY

The action of the government of British Columbia with respect to the name of a city registered under the law of that province, is of interest because of the principles upon which it is proceeded, analogous to those followed in cases of unfair competition.

The Grand Trunk Railroad adopted the name Prince Rupert as that of its terminal city, but did not register it or otherwise protect it. Thereafter a party who had secured a town site elsewhere applied the same name to his town and registered it. The railroad company then applied to the provincial government, setting forth that the name had become extensively known as the name of its terminal city, and that intending purchasers of real estate might be misled into believing that the other city was in fact the terminal city of the railroad and thus defrauded. The provincial government, accepting this view of the case, ordered that the name of the later town be cancelled. (Trade Mark Record, 1908, p. 253.)

### FRAUDULENT INTENT

In an action by the publishers of the periodical known as "Machinery," to enjoin the use of the title "Southern Machinery" upon another and rival periodical, it has been held by the United States Circuit Court of Appeals, Fifth Circuit, that a complaint was insufficient, which failed to allege that the name of the defendant's publication was used with intent to deceive the public. An allegation that the name was "calculated to deceive" is insufficient. A demurrer to the bill of complaint was sustained. (Industrial Press vs. Smith Publishing Co., 164 Fed. Rep., p. 842.)

### SALE OF MARKED BOTTLES

In the fall of 1909 the Superior Court of Cook County, Illinois, granted an injunction upon the joint suit of a large number of bottling houses, against a firm of dealers in empty bottles, enjoining the latter from procuring, dealing in or selling any of the bottles or syphons of the complainants. The complainants sold their goods in bottles or syphons which bore their several trade marks, together with the words "This bottle is never sold" or the equivalent thereof, the mark or words being blown in, or stamped upon, the bottles. It was a condition of every sale of goods, as well as the custom of the trade that these bottles, when empty, should be returned to the bottler. The contents alone was sold and that at a price very much less than the cost of manufacturing the bottles.

The defendants had been acquiring in some way, the bottles of complainants and selling them to dealers throughout the country at a low price, leading the latter, in the first instance, to believe that they were purchasing plain bottles. When, however, they received the bottles marked with complainants' marks, it had been found that they used them for the sale of their own products, thereby prejudicing the complainants and injuring their trade. (American Bottler, Nov. 15, 1909.)

### NAME OF HOTEL

That the name by which an established hotel is known will be protected against the use of a similar name by a competing hotel in the same neighborhood, has been declared by the Supreme Court in the State of Washington.

The Hotel St. Francis in the City of Seattle had been established and run under that name since the year 1905. It was a family hotel and did not make a specialty of transient trade, although it did accommodate transient guests. It was a comparatively small hotel of forty rooms and was of the class commonly known as a boarding house.

In the year 1907, the defendant established the St. Francis Hotel about four blocks from the plaintiff's house. This was a large brick building of one hundred and seventy-eight rooms and equipped in all respects as a modern transient hotel. The accommodations offered were, as compared with the complainant's hotel, quite expensive.

The trial court found as a fact that the defendant, at the time of opening its hotel, had never heard of the plaintiff's hotel and that the defendant was, therefore, entirely innocent of any wrongful intent, that the defendant had never, at any time, attempted to attract the plaintiff's patronage, or to mislead the public into believing that their hotel was that of the latter. It was further found that considerable confusion between the hotels had arisen, the plaintiff particularly being the recipient of many messages and letters intended for defendant's hotel and receiving also trunks, supplies and other articles sent to the latter. To avoid confusion it had been necessary for the plaintiff to add the street address of his house in giving any order or instruction.

The fact that the defendant had been free from any intent to trespass upon the plaintiff's rights, together with the difference in the character of the two hotels, seems to have impressed the trial court, which dismissed the complaint. This decision, however, was reversed by the Supreme Court which directed an injunction in favor of the plaintiff, holding that the question of intent was immaterial, as was also the question of whether or not the defendant had any knowledge of the existence of the plaintiff's house; that inasmuch as the two houses were competitors to a greater or less degree, were engaged in the same business in the same locality, and much confusion had resulted from the similarity of names, a case for injunctive relief had been made out. (Martell vs. St. Francis Hotel Co., 98 Pac. Rep., 1116.)

### USE OF NAME

The manufacturer of the well known "Ideal" fountain pen has lately had occasion to litigate the question of the right to use the name "Waterman," as applied to this article. Arthur A. Water-

man was formerly in the employ of the complainant L. E. Waterman Co., but in 1898 formed a copartnership for the manufacture of fountain pens under the name of "A. A. Waterman Pen Co." L. E. Waterman Co. then brought suit against the copartnership in the New York Supreme Court, and the defendant was enjoined from using a corporate name containing the word "Waterman," but was not enjoined from indicating that the fountain pens made by them were made or sold by Arthur A. Waterman & Co. or A. A. Waterman & Co. The use of the name has been continued by successive partnerships ever since.

Suit was lately brought in the Circuit Court of the United States against the Modern Pen Co., a selling agent of the firm of A. A. Waterman & Co., to enjoin the sale of pens made by the latter company as "Waterman" pens, and likewise to enjoin the use of the complainant's trade mark "Ideal." A preliminary injunction was granted, from which an appeal was taken. The Circuit Court of Appeals holds that the defendant was properly enjoined from infringing upon the trade mark "Ideal" and also from the use of the name "Waterman" alone, but that the question of the right to use the firm name of A. A. Waterman Pen Co. was properly left as fixed by the earlier litigation. (L. E. Waterman Pen Co. vs. Modern Pen Co., 183, O. G., 118.)

### COPYING OF CATALOGS

The Circuit Court for the District of Minnesota holds that the copying by one firm in its catalog of the cuts used by a competing firm to illustrate the goods which it offers for sale, is not unfair competition. Both parties were engaged in the manufacture and sale of statuary and other articles of decoration of a religious character. The plaintiff prepared and issued a trade catalog of its statuary and other articles at considerable expense, portions of which the defendant reproduced exactly without the complainant's permission, using the illustration in its own catalog as a means of selling its goods of the like character.

The complainant's motion for a preliminary injunction was based upon two grounds, first, unfair competition, and secondly, copyright infringement. In so far as concerned the first aspect of the motion, it was denied. It will be noticed that the alleged unfair competition in this instance consisted not in the reproduction or copying of the articles themselves offered for sale, but, merely of the catalogs used for the advertising of the merchandise. In view of the frequency with which this form of competition is to be met, the decision is an important one. It is the first, so far as we know, that passes upon the point. (Da Prato Statuary Co. vs. Giuliani Statuary Co., 189, Fed. Rep., 90.)

### TRADE NAMES

The owner of three stores fronting on the boardwalk at Atlantic City, each conducted under the trade name "London

Shop," recently sought to enjoin the use of another of the trade name "Page of London" on a store devoted to the sale of similar goods, alleging that confusion had resulted and would result. There being no imitation of the appearance or dressing of plaintiff's place of business, the court said that the issue narrowed down to the exclusive use of the name "London" and, assuming that the complainant was free from criticism in the adoption and use of a name which might indicate that he sold imported goods, nevertheless the circumstances did not justify a conclusion that the public would be deceived. There was some proof of actual confusion, but this confusion appeared to be due rather to the extreme carelessness of the customers than to any similarity between the two names. (*Rosenthal vs. Blatt*, 83 At. Rep., 387.)

### THE RIGHT OF AN ASSOCIATION

A bill of complaint having been drawn in behalf of an association of cigar manufacturers engaged in the manufacture and sale of cigars at Key West, Florida, to enjoin unfair competition by the defendant in the sale of cigars not made in Key West, in packages so made as to indicate that they were made there, a demurrer was interposed to the bill of complaint upon the ground that the association could not be complainant in such an action. The demurrer was sustained, the court saying that the bill set forth a cause of action in favor of the individual members of the association, but it was not apparent how the association as such could sue. While there is no reason why several complainants who seek the same relief should not be joined in the said action, the suit could, nevertheless, not be sustained in the name of the organization. (*Key West Cigar Mfrs. Assn. vs. Rosenbloom*, 171 Fed. Rep., 296.)

### TITLE OF A MAGAZINE

The Supreme Court of the State of Pennsylvania has lately rendered a decision of much interest to publishers of periodicals, enjoining the further publication under that name of a periodical "Philadelphia Suburban Life," the complaining parties being the publishers of "Suburban Life" of New York. The court found that the defendant's magazine bore a striking resemblance to the complainant's in size, style, character of its illustrations, and printed matter and in the general scheme of the title page as well as in the similarity of names, appearance and subject-matter. This, the court held, was the result of design and not of accident, with the intent to gain an unfair advantage over the plaintiff and to reap the benefit of its years of labor and skill and of the money expended by the plaintiff in introducing its maga-



zine and building up the circulation thereof. (Printers' Ink, March 2, 1910.)

### COPYING ADVERTISEMENTS

Two decisions of the special term of the New York Supreme Court held in the City of New York during the month of March, passed upon interesting phases of the general subject of unfair competition.

In the first of these cases, the plaintiff was one Benjamin H. Kaufman, who, during eight years, has been engaged in the sale of hats in the city of New York and other eastern cities. He began in a single store, and now has seventeen in New York, and in other cities. He has uniformly sold his hats at a price of one and a half dollars, and has designated his wares as "Kaufman Hats," usually with the figures "\$1.50" in connection therewith. The defendant, Samuel Kaufman, had lately opened a hat store in New York, placing upon his premises a sign reading "Kaufman Hats" and conspicuously using the figures "\$1.50" in connection therewith. In disposing of a motion for a preliminary injunction, the court said, the principle is well established that a man must use his own name honestly and not as a means of pirating upon the good will and reputation of a rival. In this case, it was held that the defendant was unfairly using his name to steal the plaintiff's trade, luring the customer into his shop by the unfair use of the name and figures, which led him to believe that he was dealing with the original Kaufman. An injunction was granted to enjoin the defendant from using the figures "\$1.50" in connection with the name "Kaufman" on the front of his store, and in general advertising, and to prevent his use of the name "Kaufman" at all, unless he prefixed to it, on the same line, his first name in letters of equal size. (Kaufman vs. Kaufman, N. Y. Law Journal, March 15, 1910.)

In the second case, an injunction was sought to prevent the production of a play under the title "The Whirlwind." The plaintiff took his stand upon the bare fact that he was the owner of a play of that name which had been produced twenty years ago, but had never been produced since. There was no claim made, as, indeed, none could be made that the public was deceived by the use of the name, or that the public, as a matter of fact, had any recollection of the plaintiff's play under that title. Considering these facts, the court said it could discover no equitable grounds for restraining the defendants. (Rosenfeld vs. Shubert, N. Y. Law Journal, March 28, 1910.)

Another recent case has just been decided by the appellate division of the New York Supreme Court, fourth department. The plaintiffs were the World's Dispensary Medical Association,

the proprietors of many remedies known as "Pierce's" or "Dr. Pierce's" remedies, the name "Dr. Pierce" forming part of the name applied to each of its remedies by the plaintiff. The defendant, although his name was Pierce, was not a physician. He put on the market certain proprietary medicines under names, each of which contained as a prominent part thereof, the names "Pierce" or "Dr. Pierce." No direct evidence was given that the plaintiff's business had been injuriously affected by the defendant's conduct, but the court said that such conduct was calculated on its face to unlawfully and unfairly interfere with the plaintiff's business; that the defendant's use of his name in the manner indicated was fraudulent. The defendant was enjoined from advertising or selling any remedies under any name having the words "Dr. Pierce" or "Dr. Pierce's" as a part thereof, or from using the name in that form in his business, and from using the name "Pierce" in the advertising or selling of such remedies, in any manner that would be calculated or designed to deceive or mislead the public as to the origin of the goods.

### PROTECTION OF GOOD WILL

The Supreme Judicial Court of Massachusetts, has lately held that, after the sale of a business and its good will, no competing business can be set up by the vendor in derogation of the grant made at the time of sale. The Marshall Engine Co., a New Jersey corporation, was engaged in the manufacture of the so-called "Marshall Perfecting Engine," under a patent issued in 1886, to one F. J. Marshall. He was the principal and practically the only factor in the corporation's business, and by him the patent and good will of the business connected therewith, together with the trade name, had been assigned to the corporation. This corporation was declared insolvent and passed into the hands of a receiver in 1905. Thereupon Marshall organized in Massachusetts the New Marshall Engine Co., receiving the whole of its capital stock.

The court holds that the act of the defendant, Marshall, in organizing a new corporation, and continuing in business under the name, interferes with the rights of the earlier corporation, as the purchaser of the good will sold to it by him at the time of the assignment of the patent. The court calls attention to the English rule, that a competing business could always be set up by one who has sold his good will, and the purchaser gets nothing more than the right to have the vendor refrain from soliciting business from the customers of the old firm. In Massachusetts, however, it holds the rule to be different, to wit, that no business can be set up by the vendor, which competes with the business sold, and thereby derogates from the grant of the good will. Whether a business so set up by the vendor does

impair the good will sold, is entirely a question of fact depending upon the circumstances. Thus, one who sells the good will of a small grocery store in the south of Boston, might, without doubt, set up a similar store in the north end of the same city. The customers of such stores are those living in the immediate vicinity. The operation of another store of the same kind, in another locality, would not affect the rights acquired by the purchaser of the first. On the other hand, in the case of a business which is world wide, the protection accorded is necessarily co-extensive with the good will to be protected, for there is no longer any question of the right to restrain the vendor of a business from conducting a similar business anywhere, provided such restraint is necessary to give to the purchaser all that he has bought.

In this case, the court said, "the good will of the business of selling engines to reduce pulp to paper, is manifestly not dependent on the place where it is carried on. A paper manufacturer is not concerned with where he buys his machinery. The business incorporated and since carried on by the defendant, Marshall, being in derogation of the assignment previously made by him, it must be enjoined." (Marshall Engine Co. vs. New Marshall Engine Co. 89 Northeastern Rep., 548.)

### RELATION TO PATENT INFRINGEMENT

The United States Circuit Court for the Northern District of New York has lately rendered an important decision upon demurrer to a bill of complaint, alleging not only patent infringement, but also unfair competition by the sale of the defendant's goods so painted and decorated as to closely imitate the appearance of the complainant's. The suit in question had to do with a flexible runner for sleds, manufactured under two patents, one of which had expired and the other of which the complainant alleged was being infringed.

It was claimed that, by the manner of decorating its sleds, the defendant was rendering them so much like the complainant's in appearance that they were being confused with those of the latter's make. The court said that, if the complainant used a particular form and ornamentation upon a patented article, so that the article came thereby to be known and distinguished as of the complainant's make, a person who should then copy the form and ornamentation and pass off his article as that of the other person's make, even though he should not infringe upon the patent, was no less guilty of unfair competition in trade. The court then goes on to say if it appears that such a distinctive form or ornamentation has been used in connection with the sale of a patented article, so that it has come to designate and distinguish the article as that covered by the patent, it follows that the exclusive right to such shapes, forms,

colors and ornamentation expires with the patent and the right to use them passes to the public. In support of this principle, the court cites the familiar Singer case, which, however, does not seem to uphold the principle enunciated, but, on the other hand, to be an authority to the contrary. This case distinctly held that the sale of a patented article under the name whereby it had become known to the public, could not be prevented so long as care was taken to distinguish the articles so sold from the article made and sold by the former owner of the patent. In many cases, it would seem that the only way in which the one article could be so distinguished from the other, would be by the use of a different shape, color or style of ornamentation from that used upon the article as covered by the patent, and that unless the two articles were differentiated in that way, a direct violation of the principle laid down in the Singer case would be involved. (Allen vs. Walton Wood & Metal Co., 178 Fed. Rep., 287.)

### INTERNATIONAL UNION

States of the Union for the Protection of Industrial Property,  
January 1, 1911.

#### PRINCIPAL UNION.

(Convention of March 20, 1883.)

Germany,	Hungary,
Austria,	Italy,
Belgium,	Japan,
Brazil,	Mexico,
Cuba,	Norway,
Denmark and Faroe Islands,	Netherlands,
Dominican Republic,	Dutch Indies,
Spain,	Surinam,
United States,	Curacao,
France, Algeria, and Colonies.	Portugal, with the Azores and
Great Britain,	Madeira,
Australian Commonwealth,	Servia,
Ceylon,	Sweden,
New Zealand,	Switzerland,
Trinidad and Tobago.	Tunis.

#### LIMITED UNIONS.

(Arrangements of April 14, 1891.)

#### 1. Repression of False Indications of Origin.

Brazil,	Great Britain,
Cuba,	Portugal,
Spain,	Switzerland,
France,	Tunis.

## 2. International Registration of Trade Marks.

Austria,	Italy,
Belgium,	Mexico,
Brazil,	Holland,
Cuba,	Portugal,
Spain,	Switzerland,
France,	Tunis.
Hungary,	

States of the Union for the Protection of Literary and Artistic Works, January, 1, 1911.

(*Le Droit d'Auteur*, January 15, 1911.)

Germany, with her protected territories.	Italy,
Belgium,	Japan,
Denmark,	Liberia,
Spain, and colonies.	Luxemburg,
France, with Algeria and colonies,	Monaco,
Great Britain, with colonies and possessions,	Norway,
Haiti,	Sweden,
	Switzerland,
	Tunis.

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**ACTS**

Governing the Union for the Protection of Industrial Property as from September 14th, 1902

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**I. CONVENTION OF MARCH 20th, 1883,**

For the Protection of Industrial Property, with the modifications and additions which have been made by the conferences at Madrid and Brussels

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**CONVENTION :**

Signature, March 20th, 1883, at Paris.

Deposition of the ratifications, June 6th, 1884, at Paris.

Entered into force, July 6th, 1884.

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**RECORDS RESPECTING THE ENDOWMENT OF THE INTERNATIONAL OFFICE :**

Signature, April 15th, 1891, at Madrid.

Deposition of ratifications, June 15th, 1892, at Madrid.

Entered into force, January 1st, 1898.

## ADDITIONAL CHARTER:

Signature, December 14th, 1900, at Brussels.

Deposition of ratifications (close of the proceedings),  
June 14th, 1902, at Brussels.

Entered into force, September 14th, 1902.

### List of the States That Are Members of the Union

Since the Convention went into force: Belgium, Brazil, Spain, France with Algiers and Colonies, Great Britain, Italy, Netherlands, Portugal with Azores and Madeira, Servia, Switzerland, Tunis, Norway, from July 1st, 1885; Sweden, from July 1st, 1885; United States of America, from May 30th, 1887; Dutch Indies, from October 1st, 1888; Surinam and Curacao, from July 1st, 1890; Domingo (Republic), from July 11th, 1890; New Zealand and Queensland, from September 7th, 1891, Denmark and Faroe Islands, from October 1st, 1894; Japan, from July 15th, 1899; Germany, from May 1st, 1903; Mexico, from September 7th, 1903; Cuba, from November 17th, 1904; Australia, from January 1st, 1909; Austria, from January 1st, 1909; Ceylon, from January 1st, 1909; Hungary, from January 1st, 1909; Trinidad and Tobago, from January 1st, 1909.

His Majesty the King of the Belgians, His Majesty the Emperor of Brazil, His Majesty the King of Spain, the President of the French Republic, the President of the Republic of Guatemala, His Majesty the King of Italy, His Majesty the King of the Netherlands, His Majesty the King of Portugal and of the Algarves, the President of the Republic of Salvador, His Majesty the King of Servia and the Federal Council of Swiss Confederation.

Equally animated by the desire to assure, by mutual consent, a complete and effective protection of the industries and commerce of the natives of their respective states and to contribute towards the guarantee of the rights of inventors and to the integrity of commercial transactions, have decided to form a convention for that purpose and have appointed as their plenipotentiaries, viz.:

\* \* \* \* \*

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, agreed upon the following articles:

Article 1.—The governments of Belgium, Brazil, Spain, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia and Switzerland have formed a Union for the Protection of Industrial Property.

Article 2.—The subjects or citizens of each of the contracting

states will enjoy in all the other states of the Union, as regards patents of invention, designs or industrial models, trade or manufacturing marks and the commercial name, the advantages which the respective laws at present allow or may allow hereafter to the natives. Consequently they will enjoy the same protection as the latter and the same legal remedy against any prejudice that may be caused to their rights, under reserve of their fulfilling the formalities and conditions, to which the natives are subjected by the interior legislation of each state.

Article 3.—Subjects or citizens of states that do not form part of the Union, who are domiciled in or have actual and bona fide industrial and commercial establishments in the territory of one of the states of the Union, are assimilated with the subjects or citizens of the contracting state.

Article 4.—Whosoever has in regular form made an application for a patent of invention, or the registration of a design or industrial model, or of a manufacturing or trade mark, in one of the contracting states, will enjoy a right of priority during the delays hereafter determined, for the purpose of making the application or registration in the other states, reserving always the rights of third parties.

Consequently the application subsequently made for a patent, or the said registrations, before the expiration of the delays, hereinafter mentioned, can not be invalidated by any facts that have taken place in the interval, say, especially any other application or registration, by the publication of the invention or the working of the same, by the selling of copies of the design or of the model, or of the trade mark.

The delays of priority mentioned above will be twelve months for patents of invention, four months for designs or industrial models and also for manufacturing and trade marks.

Article 4a.—The patents applied for in the different contracting states by persons admitted to the benefits of the convention at the terms of Articles 2 and 3, will be independent of the patents obtained for the same invention in the other states, whether belonging to the Union or not.

This stipulation will apply to patents existing already at the time the convention comes into force.

The same will apply, in case of new states joining the Union, as regards the existing patents, on both sides, at the time of joining.

Article 5.—The introduction by the patentee into the country where the patent has been granted, of articles manufactured in any of the states of the Union, will not involve its forfeiture.

Nevertheless, the patentee will remain under the obligation of working his patent in accordance with the laws of the country, where he introduces the patented articles.

Article 6.—Any industrial or commercial trade mark, regis-

tered in a regular manner in the country of its origin, will be admitted for registration and protected as such in all the other countries of the Union.

The country in which the party registering the trade mark has his principal establishment will be considered the country of origin.

If this principal establishment is not located in any of the countries of the Union, the country to which the said party belongs will be considered the country of origin.

The registration may be refused in case the object to which it has reference is contrary to morals or public order.

Article 7.—The nature of the product to which the trade mark is to be affixed can in no case form an obstacle to the registration of the trade mark.

Article 8.—The commercial name will be protected in all the countries of the Union, without the obligation of registration, whether it forms part of an industrial or commercial trade mark or not.

Article 9.—Any product bearing illicitly a trade mark or a commercial name may be seized on importation into those states of the Union in which this trade mark or commercial name is entitled to legal protection.

The seizure will take place at the request either of the proper public officer or of the interested party, in accordance with the interior legislation of each state.

In the states the legislation of which does not allow seizure on importation, this seizure may be replaced by a prohibition of importation.

The authorities are not bound to effect seizure in case of transit.

Article 10.—The stipulations of the preceding article will be applicable to any product bearing falsely, as indication of origin, the name of a definite locality, if this indication is added to a fictitious or borrowed commercial name, with fraudulent intentions.

As interested party will be considered any producer, manufacturer or merchant, engaged in the production, the manufacture or the selling of the product, and established either in the locality falsely indicated, as place of origin, or in the district where this locality is situated.

Article 10a.—Those belonging to the Convention (Arts. 2 and 3) will enjoy in all the states of the Union the same protection against dishonest competition as is afforded to natives.

Article 11.—The high contracting parties will afford temporary protection, in accordance with the legislation of each country, to patentable inventions, designs or industrial models, as well as to industrial and commercial trade marks for the products, which



may be shown at official international exhibitions, or those officially recognized and organized on the territory of one of same.

Article 12.—Each of the high contracting parties undertakes to establish a service of industrial protection and a central depot for communicating to the public patents of inventions, designs or industrial models and trade marks.

Article 13.—An international office will be organized under the title of “International Office of the Union for the Protection of Industrial Property.”

This office, the expenses of which will be borne by the administrations of all the contracting states, will be placed under the high authority of the Superior Administration of the Swiss Confederation and will work under its supervision. Its powers will be mutually determined between the states of the Union.

Article 14.—The present convention will be submitted to periodical revisions, with a view to introducing improvements of a nature calculated to make the system of the Union more perfect. To this effect the conferences will successively take place in one of the contracting states, between the delegates of the said states.

Article 15.—It is understood that the high contracting parties reserve to themselves, respectively, the right of making separately amongst themselves private arrangements for the protection of industrial property, provided that such arrangements do not contravene in any way against the stipulations of the present Convention.

Article 16.—States that have not taken part in this Convention will be admitted to membership at their request.

This membership will be notified by diplomatic channel to the government of the Swiss Confederation and by the latter to all the others.

It will carry with it, by full right, adhesion to all the clauses and admission to all the advantages stipulated by the present Convention and will come into effect one month after the forwarding of the notification by the Swiss government to the other states of the Union, unless some other subsequent date should have been stated by the adhering state.

Article 17.—The execution of the mutual undertakings contained in the present Convention is subordinated, as far as may be required, to the fulfilling of the formalities and rules established by the constitutional laws of those of the high contracting parties that are bound to instigate their application, which they undertake to do with as little delay as possible.

Article 18.—The present Convention will be carried into effect within a delay of one month, commencing from the exchange of the ratifications, and will remain in force for an indefinite period up to the expiration of one year from the day on which notice of its discontinuance may be given.

This notice of discontinuance must be addressed to the gov-

ernment charged with the receiving of adhesions. It will only influence the state that has given the said notice, the Convention remaining in force as regards the other contracting parties.

Article 19.—The present Convention will be ratified and the ratifications exchanged in Paris within the delay of one year at the outside.

In witness whereof the respective plenipotentiaries have signed it and affixed their seals.

### PROTOCOL OF THE CLOSE

At the moment of proceeding to sign the concluded Convention of the present date between the governments of Belgium, Brazil, Spain, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia and Switzerland, for the protection of industrial property, the undersigned plenipotentiaries have agreed upon as follows:

1. The words *industrial property* are to be understood in their broadest acceptation, in the sense that they apply not only to the products of industry, properly speaking, but also to products of agriculture (wines, grain, fruits, cattle, etc.) and to mineral products delivered to commerce (mineral waters, etc.).

2. Under the name of patents of invention are comprised the different kinds of industrial patents admitted by the legislations of the contracting states, such as patents of importation, patents of improvement, etc.

3. It is mentioned that the final stipulation of Article 2 of the Convention is in no way prejudicial to the legislation of each of the contracting states as regards the procedure practiced before the courts and the competency of those courts.

3a. The patentee, in each country, can only have his patent forfeited, on account of its not having been worked, after a minimum delay of three years, lasting from the application in the country in question, and in case the patentee does not justify the causes of his inaction.

4. The first paragraph of Article 6 is to be understood in the sense that no trade mark can be excluded from protection in any of the states of the Union by the fact alone that it does not comply from the point of view of the signs of which it is composed, with the conditions of the legislation of that state, provided it complies on that point with the legislation of the country of its origin and it has been duly registered in the latter country. Saving this exception, which only concerns the form of the mark and under reserve of the stipulations of the other articles of the Convention, the interior legislation of each of the states will be applied in each case.

In order to avoid all false interpretation, it is understood that the use of public armorial bearings and insignia may be consid-

ered as contrary to public order, in the sense of the final paragraph of Article 6.

5. The organization of the special service of industrial property, mentioned in Article 12, will comprise as far as possible the publication in each state of an official periodical paper.

6. The expenses of the International Office, instituted as per Article 13, will be borne mutually by the contracting states. They are not, in any case, to exceed the sum of sixty thousand francs per year.

In order to determine the contributive portion of each of the states towards the total sum of the expenses, the contracting states and those that will ultimately become members of the Union, will be divided into six classes, each contributing in the proportion of a certain number of units, viz.:

1st class.....	25 units	4th class.....	10 units
2d class.....	20 units	5th class.....	5 units
3d class.....	15 units	6th class.....	3 units

These coefficients will be multiplied by the number of the states of each class, and the sum of the products thus obtained will supply the number of units by which the total expense is to be divided. The quotient will give the amount of the outlay unit.

The contracting states are classed as follows, in view of the division of the expenses:

1st class: France, Italy.	4th class: The Netherlands.
2d class: Spain.	5th class: Servia.
3d class { Belgium, Brazil, Portugal, Switzer- land.	6th class: Guatemala, Salva- dor (1).

The Swiss administration supervises the expenses of the International Office, advances the needful funds and makes up the yearly account, which will be forwarded to all the other administrations.

The International Office will centralize the information of whatever nature with reference to the protection of international property and will combine same into general statistics to be distributed to all the administrations. It will study the common usefulness which interests the Union and will draw up, with the aid of the documents which are placed at its disposal by the different administrations, a periodical in the French language on the questions concerning the object of the Union.

The numbers of the periodical, the same as all documents published by the International Office, will be distributed amongst

(1) Guatemala and Salvador are no longer Members of the Union. On the other hand, the States which have become Members since 1883, have been ranked at their request in the following classes: Denmark, 4th class; Republic of Domingo, 6th class; United States of America, 1st class; Great Britain, 1st class; Japan, 2nd class; Norway, 4th class; Sweden, 3rd class; Tunis, 6th class.

the administrations of the states of the Union in proportion to the number of the above-mentioned contributive units. Any supplementary copies and documents which may be asked for, either by the said administrations or by societies or individuals, will be paid for apart. The International Office must hold itself always at the disposal of the members of the Union, in order to supply to them on the questions relating to the international service of industrial property, the special information which they may require.

The administration of the country where the next conference is to be held will prepare, with the assistance of the International Office, the work of that conference.

The manager of the International Office will assist at the sittings of the conferences and will take part in the discussions, however, without deliberative vote. He will make a yearly report about his management, which will be communicated to all the members of the Union.

The official language of the International Office will be the French language.

7. The present closing protocol, which will be ratified at the same time as the convention concluded on this day's date, will be considered as forming an integral part of this Convention and will have the same force, value and duration.

In witness whereof the undersigned plenipotentiaries have drawn up this present protocol.

## II. ARRANGEMENT OF APRIL 14, 1891

Concerning the International Registration of Commercial and Manufacturing Trade Marks with the alterations and additions made therein by the Brussels Conference

### ARRANGEMENT:

Signature, April 14th, 1891, at Madrid.

Deposition of ratifications, June 15th, 1892, at Madrid.

Coming into force, July 15th, 1902, at Madrid.

### SUPPLEMENTARY ACT:

Signature, December 14th, 1900, at Brussels.

Deposition of ratifications (closure of official report), June 14th, 1902, at Brussels.

Coming into force, September 14th, 1902.

### List of States Which Are Members of the Restricted Union

BELGIUM, since the arrangement came into force.

SPAIN, since the arrangement came into force.

FRANCE, with Algeria and colonies, since the arrangement came into force.

SWITZERLAND, since the arrangement came into force.

TUNIS, since the arrangement came into force.

HOLLAND, with the Dutch East Indies, Surinam and Curacao, from March 1st, 1893.

PORTUGAL, with the Azores and Madeira, from October 31st, 1893.

ITALY, from October 15th, 1894.

BRAZIL, from October 3d, 1896.

The undersigned plenipotentiaries of the states enumerated above and in virtue of Article 15 of the International Convention dated March 20th, 1883, for the protection of industrial property, have by mutual agreement, subject to ratification, concluded the following arrangement.

Article 1.—The subjects or citizens of each of the contracting states may insure in all the other states the protection of their manufacturing or commercial trade marks which have been accepted and deposited in the country of their origin subject to the said marks being deposited at the International Bureau in Berne through the agency of the government of the said country of origin.

Article 2.—The subjects or citizens of other states which have not joined in the present arrangement are on the same footing as the subjects or citizens of the contracting states provided that they, on the territory of the restricted Union constituted by the said arrangement, satisfy the conditions set forth in Article 3 of the general Convention.

Article 3.—The International Bureau will at once register the marks deposited in accordance with Article 1, and will give notice of such registration to the contracting states. The marks so registered will be published in a supplement to the Journal of the International Bureau by means of a block furnished by the depositor.

If the deponent claims the color to be a distinctive feature of his mark he shall be bound:

1. To declare this and to attach to his deposit a description in which the color is mentioned.

2. To attach to his claim copies of the said marks in colors, which will be attached to the notifications made by the International Bureau. The number of these copies will be fixed by the regulation as to the manner of execution. In view of the publicity to be given in the various states to the registered marks each administration will receive gratis from the International Bureau as many copies of the above-mentioned publication as it may choose to ask for.

Article 4.—Dating from the date of registration so effected at the International Bureau the protection in each of the contracting

states will be just the same as if the mark had been first deposited in such state.

Article 4a.—When a mark, already deposited in one or more of the contracting states, has been afterwards registered at the International Bureau in the name of the same holder or his representative, the international registration will be considered as substituted for the earlier national registrations without prejudice to any rights acquired in connection with the latter.

Article 5.—In those countries where the laws authorize it, the administrations to whom the International Bureau shall notify the registration of a mark shall be entitled to declare that protection can not be granted to this mark in their territory. Such refusal can not be disputed except under the conditions applicable in virtue of the Convention of March 20th, 1883 to a mark deposited for national registration.

They must exercise this power within the period fixed by their national law and at latest, within the year of the notification mentioned in Article 3, stating at the same time to the International Bureau the motives for their refusal.

The said declaration so notified to the International Bureau will be at once forwarded by the latter to the administration of the country of origin and to the owner of the mark. The party interested will have the same means of appeal as if the mark had been directly deposited by him in the country where protection is refused.

Article 5a.—The International Bureau will deliver to any person making the request, subject to a fee fixed by regulation, a copy of the memoranda entered in the register relating to any particular mark.

Article 6.—The protection resulting from registration at the International Bureau will last twenty years from the date of registration but may not be claimed on behalf of a mark no longer under legal protection in the country of origin.

Article 7.—Registration may always be renewed in accordance with the provisions of Articles 1 and 3. Six months previous to the expiration of the period of protection the International Bureau will give official intimation thereof to the administration of the country of origin and the owner of the mark.

Article 8.—The administration of the country of origin will fix at its pleasure and collect on its own behalf a fee to be claimed from the owner of the mark who asks for international registration. To this fee will be added an international charge of 100 francs for the first mark and 50 francs for every other mark deposited at the same time by the same owner. The annual proceeds of this charge will be divided equally among the contracting states through the agency of the International Bureau after deduction of the common expenses necessary for the execution of this agreement.

Article 9.—The administration of the country of origin will notify to the International Bureau any annulations, erasures, renunciations, transmissions and other changes, that may take place in the ownership of the mark.

The International Bureau will register these alterations and give immediate notice thereof in its journal to the contracting administrations and the public.

Article 9a.—When a mark entered in the International Register is transmitted to a person settled in a contracting state other than the country of origin of the mark, the transmission shall be notified to the International Bureau by the administration of the said country of origin. The International Bureau shall register the transmission and after receiving the assent of the administration to which the new holder is subject it will give notice thereof to the other administrations and publish the same in its journal.

It is not the purpose of this provision to modify the law of the contracting state which prohibits the transfer of the mark unless accompanied by the simultaneous cession of the industrial or commercial concern whose products it distinguishes.

No transmission will be registered of any mark entered on the International Register if made in favor of a person not established in one of the signatory countries.

Article 10.—The administration will settle by mutual agreement the details relating to the execution of the present arrangement.

Article 11.—The states of the Union for the protection of industrial property which have not taken part in the present arrangement will be allowed on their request to join the same in the form provided by Article 16 of the Convention of March 20th, 1883, for the protection of industrial property.

As soon as the International Bureau is informed that a state has joined the present arrangement it will forward to the administration of such state in conformity with Article 3 a complete list of the marks then enjoying international protection.

This list will of itself ensure for the said marks the benefit of previous regulations in the territory of the state so joining and will involve the delay of one year, during which the administration interested may make the declaration provided in Article 5.

Article 12.—The present arrangement will be ratified and the ratifications of the same exchanged at Madrid within a period of six months at latest.

It will come into force in one month from the exchange of ratifications and shall have the same force and duration as the Convention of March 20th, 1883.

In witness whereof the plenipotentiaries of the states above enumerated have signed the present arrangement.

## III. REGULATION

## For the Execution of the Arrangement of April 14, 1891, Concerning the Registration of Industrial or Commercial Trade Marks

(Text Approved by All the Administrations in 1903.)

Article 1.—All requests for the purpose of securing the international registration of an industrial or commercial trade mark in virtue of the arrangement of April 14th, 1891, revised December 14th, 1900, must be addressed by the owner of the mark to the administration of the country of origin in the form which the latter may prescribe.

The administration of the country of origin will fix at its pleasure and collect a fee the amount of which will remain in its possession. To this fee will be added an international charge fixed as follows:

1. In the case of the deposit of a single mark, one hundred francs.
2. In the case of several deposits, one hundred francs for the first mark and fifty francs for each of the other marks deposited at the same time by the same owner.

Article 2.—After having ascertained that the mark is properly registered, the administration of the country of origin will forward to the International Bureau of Industrial Property in Berne:

A.—A request for registration, in duplicate, containing a typographical representation of the mark, and stating:

1. The name of the owner of the mark.
2. His address.
3. The manufactures or goods to which the mark applies.
4. The date of registration in the country of origin.
5. The order number of the mark in the country of origin.

B.—A block of the mark for the typographical reproduction of the latter in the publication which will be made of it by the International Bureau. This block must reproduce the mark exactly, so as to show up all details in the most conspicuous manner. It must not be less than 15 millimetres or more than 10 centimetres, either in length or breadth. The exact thickness of the block must be 24 millimetres, corresponding to the height of the printed characters. This block will be kept at the International Bureau.

C.—If the deponent claims the color as a distinctive feature of his mark, forty copies on paper of a colored reproduction of the mark.



In this case the request must contain a brief description in French, mentioning the color. Should neither one nor the other of the above-mentioned conditions be observed, the International Bureau will proceed with the registration of the mark and notification thereof in accordance with the particulars received.

D.—A postal order for the amount of the international charge.

The request for registration will be drawn up in accordance with the form attached to the present regulation or any other form which the administrations of the contracting states may by common agreement subsequently adopt. The International Bureau will forward the necessary forms to the administrations gratuitously.

Article 3.—The International Bureau will proceed without delay to enter the mark in a register kept for that purpose. This register will contain the following particulars:

1. The date of registration at the International Bureau.
2. The date of notification to the contracting administrations.
3. The order number of the mark.
4. The name of the owner of the mark.
5. His address.
6. The manufactures or goods to which the mark is applied.
7. The country of origin of the mark.
8. The date of registration in the country of origin.
9. The order number of the mark in the country of origin.
10. Memoranda relating to refusal of protection, transmission (Art. 9 and 9 *bis* of the arrangement) or erasure of the mark.

Article 4.—As soon as the entry is made in the register, the International Bureau will certify on the two copies of the request that the registration has been duly effected, and will affix thereon its signature and seal. One of these copies will be filed among the records of the Bureau and the other will be returned to the administration of the country of origin.

Furthermore, the International Bureau will notify to the administrations the registration so effected by sending to each of them a typographical reproduction of the mark and informing them of:

1. The date of registration at the International Bureau.
2. The order number of the mark.
3. The name and address of the deponent.
4. The manufactures or merchandise to which the mark is applied.
5. The country of origin of the mark as well as the date of registration and order number in said country.

In the case provided by Article 2 under letter C, the aforesaid notification shall mention, in addition, the deposit in colors, and will be accompanied by a copy of the reproduction of the mark in colors.

Article 5.—The International Bureau will then see to the publication of the mark in a supplement of its journal which will consist of the reproduction of the mark, accompanied by the details mentioned in Article 4, Paragraph 2; and, if necessary, the description provided under letter C of Article 2.

At the commencement of every year the International Bureau will issue a table giving in alphabetical order per contracting state the names of the owners of the marks published during the course of the previous year.

Each administration will receive gratuitously from the International Bureau the number of copies it may choose to ask for of the supplement containing the publications relating to International Registration.

Article 6.—The declaration notified to the International Bureau in the terms of Article 5 of the arrangement (non-admission of the mark to protection in a given country) will be at once forwarded by the bureau to the administration of the country of origin and to the owner of the mark.

Article 6 *bis*.—The fee provided for under Article 5 *bis* of the arrangement for copies or extracts from the register is fixed at two francs per copy or extract.

Article 7.—Such changes as may have taken place in the ownership of a mark and which have been made the object of the modification mentioned in Article 9 and 9 *bis* of the arrangement, will be entered in the register of the International Bureau except in such cases where, in the terms of the third paragraph of the latter article, transmission can not be registered. The International Bureau will in its turn notify to the contracting administrations the registered alterations, and will publish them in its journal, keeping in view the provisions of the first paragraph of Article 9 *bis* when the new owner is established in a contracting state other than the country of origin of the mark.

Article 8.—Six months before the expiration of the period of protection of twenty years the International Bureau will send an official notice to that effect to the administration of the country of origin and the owner of the mark.

The formalities to be observed in the renewal of the international registration will be the same as if it were a question of a new registration excepting that it will no longer be necessary to send a block.

Article 9.—At the commencement of each year the International Bureau will make out a statement of charges of all kinds which have been occasioned during the previous year by the international registration of marks. The amount of these charges

will be deducted from the total sums received from the administrations by way of fee for international registration, and the excess of receipts will be divided in equal shares between all the contracting states.

Article 10.—The complete list prescribed by Article 11 of the arrangement will contain the same particulars as the notification under Article 4 of the present regulations.

Article 11.—The present regulation will continue in force for the same length of time as the arrangement to which it refers.

The contracting administrations may at any time introduce therein by mutual agreement such modifications as may seem necessary to them in accordance with the provisions of Article 10 of the said arrangement.

#### IV. ARRANGEMENT OF APRIL 14, 1891

##### Concerning the Suppression of False Statements of Origin of Merchandise

Signature ..... April 14th, 1891, at Madrid.  
 Deposit of ratifications..... June 15th, 1892, at Madrid.  
 Coming into force..... July 15th, 1893.

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#### List of Members at the Restricted Union

SPAIN, FRANCE, with ALGERIA and COLONIES, GREAT BRITAIN, SWITZERLAND, and TUNIS, since the arrangement came into operation; PORTUGAL, with the AZORES and MADEIRA, since October 31st, 1893; BRAZIL, since October 3d, 1893.

Article 1.—All products bearing a false statement of origin in which one of the contracting states or some locality situated in one or other of them is mentioned directly or indirectly as the country or place of origin, shall be seized on importation into any one of the said states.

The seizure may also be effected in the state where the false declaration of origin may have been affixed, or in that state into which the product bearing such false declaration shall have been introduced.

If the laws of a state do not allow of the seizure on importation, such seizure to be substituted by a prohibition to import.

If the laws of a state do not allow of a seizure inland, such seizure to be substituted by acts and measures which the laws of the said state provide in such cases for the benefit of natives.

Article 2.—The seizure will be made either at the request of the proper public officer or an interested party, individual or company, in accordance with the internal laws of each state.

The authorities shall not be called upon to effect the seizure during transit.

Article 3.—The present provisions do not prevent the seller putting his name or address on the products coming from a country other than that of sale, but in that case, the address or name must be accompanied by a precise statement in conspicuous characters of the country or place of manufacture or production.

Article 4.—The tribunals of each country will have to decide what are the appellations which, from their generic character, are outside the provisions of this arrangement, the district appellations of the origin of wine products not being, however, included in the reservation laid down by this article.

Article 5.—The states of the Union for the protection of industrial property which have not taken part in the present arrangement will be admitted at their request to join the same in the form prescribed by Article 16 of the Convention of March 20th, 1883, for the protection of industrial property.

Article 6.—The present arrangement will be ratified and the ratifications of the same exchanged at Madrid within a period of six months at the latest.

It will come into operation in one month from the date of the exchange of ratifications and will have the same force and duration as the Convention of March 20th, 1883.

In witness whereof the plenipotentiaries of the states enumerated above have signed the present arrangement.

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## FOURTH INTERNATIONAL CONGRESS OF AMERICAN STATES

### Conventions Relating to Patents, Trade Marks, Designs, Etc.

DEPARTMENT OF THE INTERIOR,  
UNITED STATES PATENT OFFICE,

*Washington, D. C., February 23, 1911.*

The following conventions relating to patents, designs, and industrial models, trade marks, and literary and artistic copyrights, which were prepared at the request of the Secretary of State by the Commissioner of Patents, who was designated by the President of the United States as the Expert Attaché to the delegation of the United States of America to the Fourth International Congress of American States, were adopted by said Congress, which met at Buenos Ayres June 9 to August 30, 1910, and have been approved by the United States Senate.

EDWARD B. MOORE,  
*Commissioner of Patents.*

## CONVENTION

## INVENTIONS, PATENTS, DESIGNS AND INDUSTRIAL MODELS.

Their Excellencies the Presidents of the United States of America, the Argentine Republic, Brazil, Chili, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay and Venezuela:

Being desirous that their respective countries may be represented at the Fourth International American Conference, have sent thereto the following delegates, duly authorized to approve the recommendations, resolutions, conventions, and treaties which they might deem advantageous to the interests of America.

*United States of America:* Henry White, Enoch H. Crowder, Lewis Nixon, John Bassett Moore, Bernard Moses, Lamar C. Quintero, Paul Samuel Reinsch, David Kinley.

*Argentine Republic:* Antonio Bermejo, Eduardo L. Bidau, Manuel A. Montes de Oca, Epifanio Portela, Carlos Rodríguez Larreta, Carlos Salas, José A. Terry, Estanislao S. Zeballos.

*United States of Brazil:* Joaquim Murtinho, Domicio da Gama, José L. Almeida Nogueira, Olavo Bilac, Gastão da Cunha, Herculano de Freitas.

*Republic of Chili:* Miguel Cruchaga Tocornal, Emilio Bello Codecido, Aníbal Cruz Díaz, Beltrán Mathieu.

*Republic of Colombia:* Roberto Ancízar.

*Republic of Costa Rica:* Alfredo Volio.

*Republic of Cuba:* Carlos García Vélez, Rafael Montoro y Valdés, Gonzalo de Quesada y Aróstegui, Antonio Gonzalo Pérez, José M. Carbonell.

*Dominican Republic:* Américo Lugo.

*Republic of Ecuador:* Alejandro Cárdenas.

*Republic of Guatemala:* Luis Toledo Herrarte, Manuel Arroyo, Mario Estrada.

*Republic of Haiti:* Constantin Fouchard.

*Republic of Honduras:* Luis Lazo Arriaga.

*Mexican United States:* Victoriano Salado Alvarez, Luis Pérez Verdía, Antonio Ramos Pedrueza, Roberto A. Esteva Ruiz.

*Republic of Nicaragua:* Manuel Pérez Alonso.

*Republic of Panama:* Belisario Porras.

*Republic of Paraguay:* Teodosio González, José P. Montero.

*Republic of Peru:* Eugenio Larrabure y Unánue, Carlos Alvarez Calderón, José Antonio de Lavalle y Pardo.

*Republic of Salvador:* Federico Mejía, Francisco Martínez Suárez.

*Republic of Uruguay:* Gonzalo Ramírez, Carlos M. de Pena, Antonio M. Rodríguez, Juan José Amézaga.

*United States of Venezuela:* Manuel Díaz Rodríguez, César Zumeta.

Who, after having presented their credentials, and the same

having been found in due and proper form, have agreed upon the following convention on inventions, patents, designs, and industrial models.

ARTICLE I. The subscribing nations enter into this convention for the protection of patents of invention, designs, and industrial models.

ART. II. Any persons who shall obtain a patent of invention in any of the signatory States shall enjoy in each of the other States all the advantages which the laws relative to patents of invention, designs, and industrial models concede. Consequently, they shall have the right to the same protection and identical legal remedies against any attack upon their rights, provided they comply with the laws of each State.

ART. III. Any person who shall have regularly deposited an application for a patent of invention or design or industrial model in one of the contracting States shall enjoy, for the purposes of making the deposit in the other States and under the reserve of the rights of third parties, a right of priority during a period of twelve months for patents of invention, and of four months for designs or industrial models.

In consequence the deposits subsequently made in any other of the signatory States before the expiration of these periods cannot be invalidated by acts performed in the interval, especially by other deposits, by the publication of the invention or its working, or by the sale of copies of the design or of the model.

ART. IV. When, within the terms fixed, a person shall have filed applications in several States for the patent of the same invention, the rights resulting from patents thus applied for shall be independent of each other.

They shall also be independent of the rights arising under patents obtained for the same invention in countries not parties to this convention.

ART. V. Questions which may arise regarding the priority of patents of invention shall be decided with regard to the date of the application for the respective patents in the countries in which they are granted.

ART. VI. The following shall be considered as inventions: A new manner of manufacturing industrial products, a new machine or mechanical or manual apparatus which serves for the manufacture of said products, the discovery of a new industrial product, the application of known methods for the purpose of securing better results, and every new, original, and ornamental design or model for an article of manufacture.

The foregoing shall be understood without prejudice to the laws of each State.

ART. VII. Any of the signatory States may refuse to recognize patents for any of the following causes:

(a) Because the inventions or discoveries may have been

published in any country prior to the date of the invention by the applicant.

(b) Because the inventions have been registered, published, or described in any country more than one year prior to the date of the application in the country in which the patent is sought.

(c) Because the inventions have been in public use, or have been on sale in the country in which the patent has been applied for, one year prior to the date of said application.

(d) Because the inventions or discoveries are in some manner contrary to morals or laws.

ART. VIII. The ownership of a patent of invention comprises the right to enjoy the benefits thereof, and the right to assign or transfer it in accordance with the laws of the country.

ART. IX. Persons who incur civil or criminal liabilities, because of injuries or damage to the rights of inventors, shall be prosecuted and punished in accordance with the laws of the countries wherein the offense has been committed or the damage occasioned.

ART. X. Copies of patents certified in the country of origin, according to the national law thereof, shall be given full faith and credit as evidence of the right of priority, except as stated in Article VII.

ART. XI. The treaties relating to patents of invention, designs, or industrial models, previously entered into between the countries subscribing to the present convention, shall be superseded by the same from the time of its ratification in so far as the relations between the signatory States are concerned.

ART. XII. The adhesion of the American Nations to the present convention shall be communicated to the Government of the Argentine Republic in order that it may communicate them to the other States. These communications shall have the effect of an exchange of ratifications.

ART. XIII. A signatory nation that sees fit to retire from the present convention, shall notify the Government of the Argentine Republic, and one year after the receipt of the communication the force of this convention shall cease, in so far as the nation which shall have withdrawn its adherence is concerned.

In witness whereof, the plenipotentiaries have signed the present treaty and affixed thereto the seal of the Fourth International American Conference.

Made and signed in the city of Buenos Ayres on the 20th day of August in the year 1910, in Spanish, English, Portuguese, and French, and deposited in the ministry of foreign affairs of the Argentine Republic, in order that certified copies be made for transmission to each of the signatory nations through the appropriate diplomatic channels.

*For the United States of America:*

Henry White.	Bernard Moses.
Enoch H. Crowder.	Lamar C. Quintero.
Lewis Nixon.	Paul S. Reinsch.
John Bassett Moore.	David Kinley.

*For the Argentine Republic:*

Antonio Bermejo.	Carlos Salas.
Eduardo L. Bidau.	José A. Terry.
Manuel A. Montes de Oca.	Estanislao S. Zeballos.
Epifanio Portela.	

*For the United States of Brazil:*

Joaquim Murtinho.	Olavo Bilac.
Domicio da Gama.	Gastão da Cunha.
José L. Almeida Nogueira.	Herculano de Freitas.

*For the Republic of Chili:*

Miguel Cruchaga Tocornal.	Aníbal Cruz Díaz.
Emilio Bello Codecido.	Beltrán Mathieu.

*For the Republic of Colombia:*

Roberto Ancízar.

*For the Republic of Costa Rica:*

Alfredo Volio.

*For the Republic of Cuba:*

Carlos García Velez.	José M. Carbonell.
Rafael Montoro y Valdés.	Gonzalo de Quesada y
Antonio Gonzalo Pérez.	Aróstegui.

*For the Dominican Republic:*

Américo Lugo.

*For the Republic of Ecuador:*

Alejandro Cárdenas.

*For the Republic of Guatemala:*

Luis Toledo Herrarte.	Mario Estrada.
Manuel Arroyo.	



*For the Republic of Haiti:*

Constantin Fouchard.

*For the Republic of Honduras:*

Luis Lazo Arriaga.

*For the Mexican United States:*

Victoriano Salado Alvarez.	Antonio Ramos Pedrueza.
Luis Pérez Verdía.	Roberto A. Estevá Ruiz.

*For the Republic of Nicaragua:*

Manuel Pérez Alonso.

*For the Republic of Panama:*

Belisario Porras.

*For the Republic of Paraguay:*

Teodosio González.	José P. Montero.
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*For the Republic of Peru:*

Eugenio Larrabure y Unánue.	José Antonio de Lavalle y Pardo.
Carlos Alvarez Calderón.	

*For the Republic of Salvador:*

Federico Mejía.	Francisco Martínez Suárez.
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*For the Republic of Uruguay:*

Gonzalo Ramírez.	Antonio M. Rodríguez.
Carlos M. de Pena.	Juan José Amézaga.

*For the United States of Venezuela:*

Manuel Diaz Rodríguez.	César Zumeta.
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 CONVENTION

## PROTECTION OF TRADE MARKS.

Their Excellencies the Presidents of the United States of America, the Argentine Republic, Brazil, Chili, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti,

Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay and Venezuela;

Being desirous that their respective countries may be represented at the Fourth International American Conference, have sent thereto the following delegates, duly authorized to approve the recommendations, resolutions, conventions, and treaties which they might deem advantageous to the interest of America:

*United States of America:* Henry White, Enoch H. Crowder, Lewis Nixon, John Bassett Moore, Bernard Moses, Lamar C. Quintero, Paul Samuel Reinsch, David Kinley.

*Argentine Republic:* Antonio Bermejo, Eduardo L. Bidau, Manuel A. Montes de Oca, Epifanio Portela, Carlos Rodríguez Larreta, Carlos Salas, José A. Terry, Estanislao S. Zeballos.

*United States of Brazil:* Joaquim Murтинho, Domicio da Gama, José L. Almeida Nogueira, Olavo Bilac, Gastão da Cunha, Herculano de Freitas.

*Republic of Chili:* Miguel Cruchaga Tocornal, Emilio Bello Codecido, Aníbal Cruz Díaz, Beltrán Mathieu.

*Republic of Colombia:* Roberto Ancizar.

*Republic of Costa Rica:* Alfredo Volio.

*Republic of Cuba:* Carlos García Vélez, Rafael Montoro y Valdés, Gonzalo de Quesada y Aróstegui, Antonio Gonzalo Pérez, José M. Carbonell.

*Dominican Republic:* Américo Lugo.

*Republic of Ecuador:* Elejandro Cárdenas.

*Republic of Guatemala:* Luis Toledo Herrarte, Manuel Arroyo, Mario Estrada.

*Republic of Haiti:* Constantin Fouchard.

*Republic of Honduras:* Luis Lazo Arriaga.

*Mexican United States:* Victoriano Salado Alvarez, Luis Pérez Verdía, Antonio Ramos Pedrueza, Roberto A. Esteva Ruiz.

*Republic of Nicaragua:* Manuel Pérez Alonso.

*Republic of Panama:* Belisario Porras.

*Republic of Paraguay:* Teodosio González, José P. Montero.

*Republic of Peru:* Eugenio Larrabure y Unánue, Carlos Alvarez Calderón, José Antonio de Lavalle y Pardo.

*Republic of Salvador:* Federico Mejía, Francisco Martínez Suárez.

*Republic of Uruguay:* Gonzalo Ramírez, Carlos M. de Pena, Antonio M. Rodríguez, Juan José Amézaga.

*United States of Venezuela:* Manuel Díaz Rodríguez, César Zumeta.

Who, after having presented their credentials and the same having been found in due and proper form, have agreed upon the following Convention for the Protection of Trade Marks.

ARTICLE I. The signatory nations enter into this convention for the protection of trade marks and commercial names.

ART. II. Any mark duly registered in one of the signatory

States shall be considered as registered also in the other States of the union, without prejudice to the rights of third persons and to the provisions of the laws of each State governing the same.

In order to enjoy the benefit of the foregoing, the manufacturer or merchant interested in the registry of the mark must pay, in addition to the fees or charges fixed by the laws of the State in which application for registration is first made, the sum of fifty dollars gold, which sum shall cover all the expenses of both bureaus for the international registration in all the signatory States.

ART. III. The deposit of a trade mark in one of the signatory States produces in favor of the depositor a right of priority for the period of six months, so as to enable the depositor to make the deposit in the other States.

Therefore the deposit made subsequently and prior to the expiration of this period cannot be annulled by acts performed in the interval, especially by another deposit, by publication, or by the use of the mark.

ART. IV. The following shall be considered as trade mark: Any sign, emblem, or special name that merchants or manufacturers may adopt or apply to their goods or products in order to distinguish them from those of other manufacturers or merchants who manufacture or deal in articles of the same kind.

ART. V. The following cannot be adopted or used as trade mark: National, provincial, or municipal flags or coats-of-arms; immoral or scandalous figures; distinctive marks which may have been obtained by others or which may give rise to confusion with other marks; the general classification of articles; pictures or names of persons without their permission; and any design which may have been adopted as an emblem by any fraternal or humanitarian association.

The foregoing provision shall be construed without prejudice to the particular provisions of the laws of each State.

ART. VI. All questions which may arise regarding the priority of the deposit or the adoption of a trade mark shall be decided with due regard to the date of the deposit in the State in which the first application was made therefor.

ART. VII. The ownership of a trade mark includes the right to enjoy the benefits thereof and the right of assignment or transfer in whole or in part of its ownership or its use in accordance with the provisions of the laws of the respective States.

ART. VIII. The falsification, imitation, or unauthorized use of a trade mark, as also the false representation as to the origin of a product, shall be prosecuted by the interested party in accordance with the laws of the State wherein the offense is committed.

For the effects of this article, interested parties shall be understood to be any producer, manufacturer, or merchant engaged

in the production, manufacture, or traffic of said product, or in the case of false representation of origin, one doing business in the locality falsely indicated as that of origin, or in the territory where said locality is situated.

ART. IX. Any person in any of the signatory States shall have the right to petition and obtain in any of the States, through its competent judicial authority, the annulment of the registration of a trade mark, when he shall have made application for the registration of that mark, or of any other mark, calculated to be confused, in such State, with the mark in whose annulment he is interested, upon proving:

(a) That the mark the registration whereof he solicits has been employed or used within the country prior to the employment or use of the mark registered by the person registering it or by the persons from whom he has derived title;

(b) That the registrant had knowledge of the ownership, employment, or use in any of the signatory States of the mark of the applicant the annulment whereof is sought prior to the use of the registered mark by the registrant or by those from whom he has derived title;

(c) That the registrant had no right to the ownership, employment, or use of the registered mark on the date of its deposit;

(d) That the registered mark had not been used or employed by the registrant or by his assigns within the term fixed by the laws of the State in which the registration shall have been made.

ART. X. Commercial names shall be protected in all the States of the union, without deposit or registration, whether the same form part of a trade mark or not.

ART. XI. For the purposes indicated in the present convention a union of American Nations is hereby constituted, which shall act through two international bureaus established one in the city of Habana, Cuba, and the other in the city of Rio de Janeiro, Brazil, acting in complete accord with each other.

ART. XII. The international bureaus shall have the following duties:

1. To keep a register of the certificates of ownership of trade mark issued by any of the signatory States.

2. To collect such reports and data as relate to the protection of intellectual and industrial property and to publish and circulate them among the nations of the union, as well as to furnish them whatever special information they may need upon this subject.

3. To encourage the study and publicity of the questions relating to the protection of intellectual and industrial property; to publish for this purpose one or more official reviews, containing the full texts or digest of all documents forwarded to the bureaus by the authorities of the signatory States.

The Governments of said States shall send to the International

American Bureaus their official publications which contain the announcements of the registrations of trade marks, and commercial names, and the grants of patents and privileges as well as the judgments rendered by the respective courts concerning the invalidity of trade marks and patents.

4. To communicate to the Governments of the union any difficulties or obstacles that may oppose or delay the effective application of this convention.

5. To aid the Governments of the signatory States in the preparations of international conferences for the study of legislation concerning industrial property, and to secure such alterations as it may be proper to propose in the regulations of the union, or in treaties in force to protect industrial property. In case such conferences take place, the directors of the bureaus shall have the right to attend the meetings and there to express their opinions, but not to vote.

6. To present to the Governments of Cuba and of the United States of Brazil, respectively, yearly reports of their labors which shall be communicated at the same time to all the Governments of the other States of the union.

7. To initiate and establish relations with similar bureaus and with the scientific and industrial associations and institutions for the exchange of publications, information, and data conducive to the progress of the protection of industrial property.

8. To investigate cases where trade marks, designs, and industrial models have failed to obtain the recognition of registration provided for by this convention, on the part of the authorities of any one of the States forming the union, and to communicate the facts and reasons to the Government of the country of origin and to interested parties.

9. To co-operate as agents for each one of the Governments of the signatory States before the respective authorities for the better performance of any act tending to promote or accomplish the ends of this convention.

ART. XIII. The bureau established in the city of Habana, Cuba, shall have charge of the registration of trade marks coming from the United States of America, Mexico, Cuba, Haiti, the Dominican Republic, El Salvador, Honduras, Nicaragua, Costa Rica, Guatemala, and Panama.

The bureau established in the city of Rio de Janeiro shall have charge of the registration of trade marks coming from Brazil, Uruguay, the Argentine Republic, Paraguay, Bolivia, Chili, Peru, Ecuador, Venezuela, and Colombia.

ART. XIV. The two international bureaus shall be considered as one, and for the purpose of the unification of the registrations it is provided:

(a) Both shall have the same books and the same accounts, kept under an identical system.

(b) Copies shall be reciprocally transmitted weekly from one to the other of all applications, registrations, communications, and other documents affecting the recognition of the rights of owners of trade marks.

ART. XV. The international bureaus shall be governed by identical regulations, formed with the concurrence of the Governments of the Republic of Cuba and of the United States of Brazil and approved by all the other signatory States.

Their budgets, after being sanctioned by the said Governments, shall be defrayed by all the signatory States in the same proportion as that established for the International Bureau of the American Republics at Washington, and in this particular they shall be placed under the control of those Governments within whose territories they are established.

The international bureaus may establish such rules of practice and procedure, not inconsistent with the terms of this convention, as they may deem necessary and proper to give effect to its provisions.

ART. XVI. The Governments of the Republic of Cuba and of the United States of Brazil shall proceed with the organization of the Bureaus of the International Union as herein provided, upon the ratification of this convention by at least two-thirds of the nations belonging to each group.

The simultaneous establishment of both bureaus shall not be necessary: one only may be established if there be the number of adherent Governments provided for above.

ART. XVII. The treaties on trade marks previously concluded by and between the signatory States, shall be substituted by the present convention from the date of its ratification, as far as the relations between the signatory States are concerned.

ART. XVIII. The ratifications or adhesion of the American States to the present convention shall be communicated to the Government of the Argentine Republic, which shall lay them before the other States of the union. These communications shall take the place of an exchange of ratifications.

ART. XIX. Any signatory State that may see fit to withdraw from the present convention shall so notify the Government of the Argentine Republic, which shall communicate this fact to the other States of the union, and one year after the receipt of such communication this convention shall cease with regard to the State that shall have withdrawn.

In witness whereof the plenipotentiaries and delegates sign this convention and affix to it the seal of the Fourth International American Conference.

Made and signed in the city of Buenos Ayres on the 20th day of August in the year 1910, in Spanish, English, Portuguese,

and French, and filed in the Ministry of Foreign Affairs of the Argentine Republic in order that certified copies may be made, to be forwarded through appropriate diplomatic channels to each one of the signatory nations.

*For the United States of America:*

Henry White.	Bernard Moses.
Enoch H. Crowder.	Lamar C. Quintero.
Lewis Nixon.	Paul S. Reinsch.
John Bassett Moore.	David Kinley.

*For the Argentine Republic:*

Antonio Bermejo.	Carlos Salas.
Eduardo L. Bidau.	José A. Terry.
Manuel A. Montes de Oca.	Estanislao S. Zeballos.
Epifanio Portela.	

*For the United States of Brazil:*

Joaquim Murtinho.	Olavo Bilac.
Domicio da Gama.	Gastão da Cunha.
José L. Almeida Norgueira.	Herculano de Freitas.

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Miguel Cruchaga Tocornal.	Aníbal Cruz Díaz.
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*For the Republic of Colombia:*

Roberto Ancízar.

*For the Republic of Costa Rica:*

Alfredo Volio.

*For the Republic of Cuba:*

Carlos García Velez.	Antonio Gonzalo Pérez.
Rafael Montoro y Valdés.	José M. Carbonell.
Gonzalo de Quesada y Aróstegui.	

*For the Dominican Republic:*

Américo Lugo.

*For the Republic of Ecuador:*

Alejandro Cárdenas.

*For the Republic of Guatemala:*

Luis Toledo Herrarte.                      Mario Estrada.  
Manuel Arroyo.

*For the Republic of Haiti:*

Constantin Fouchard.

*For the Republic of Honduras:*

Luis Lazo Arriaga.

*For the Mexican United States:*

Victoriano Salado Alvarez.              Antonio Ramos Pedrueza.  
Luis Pérez Vedía.                      Roberto A. Esteva Ruiz.

*For the Republic of Nicaragua:*

Manuel Pérez Alonso.

*For the Republic of Panama:*

Belisario Porras.

*For the Republic of Paraguay:*

Teodosio González.                      José P. Montero.

*For the Republic of Peru.*

Eugenio Larrabure y Unánue.              José Antonio de Lavalle y  
Carlos Alvarez Calderón.              Pardo,

*For the Republic of Salvador:*

Federico Mejía.                      Francisco Martínez Suárez.

*For the Republic of Uruguay:*

Gonzalo Ramírez.                      Antonio M. Rodríguez.  
Carlos M. de Pena.                      Juan José Amézaga.

*For the United States of Venezuela:*

Manuel Díaz Rodríguez.              César Zumeta.

## INTERNATIONAL UNION

Revision of the Paris Convention of 1883 and the Additional  
Act of Brussels of 1900

ART. 1. The contracting countries constitute themselves a Union for the Protection of Industrial Property.

ART. 2. The subjects or citizens of each of the contracting countries shall, in all other countries of the Union, in matters



concerning patents of invention, utility models, industrial designs or models, trade or commercial marks, trade names, indications of origin and suppression of unfair competition, enjoy the advantages which their respective laws now grant or shall hereafter grant to natives. Consequently, they shall have the same protection as the latter and the same legal remedy against any infringements of their rights, subject to the fulfillment of the formalities and conditions imposed upon natives. No obligation of domicile or establishment in the country, where protection is claimed, can be imposed upon the members of the Union.

ART. 3. Subjects or citizens of countries, not forming part of the Union, who are domiciled or have effective or bona fide industrial or commercial establishments within the territory of one of the countries of the Union, shall be assimilated to the subjects or citizens of the contracting countries.

ART. 4. (A) Any person who has duly filed an application for a patent of invention, an utility model, an industrial design or model, a trade or commercial mark in one of the contracting countries, or his legal assign shall enjoy, for filing the application in other countries and reserving the rights of third parties, a right of priority during the terms hereinafter stated.

(B) Consequently, a subsequent application in one of the other countries of the Union before the expiration of these terms shall not be invalidated through any acts accomplished in the interval, either, for instance, by another application, by publication of the invention or by the working thereof by a third party, by the sale of copies of the design or model, or by the use of the mark.

(C) The above-mentioned term of priority shall be twelve months for patents of invention and utility models, and four months for industrial designs and models and for trade and commercial marks.

(D) Whoever shall wish to take advantage of the priority of a previous application shall be obliged to file a declaration stating the date and the country of such application. Each country shall determine, at what time, at the latest, such declaration must be filed. Said statements shall be made mention of in the publications, issued by the competent authorities, especially in the Letters Patent and the corresponding descriptions. The contracting countries may demand from the party, who makes the declaration of priority, the exhibit of a copy of the former application (description, drawings, etc.), legally certified to by the authorities which received the same. This copy shall be exempt from all authentication. It may be demanded that the same be accompanied by a certification of the date of application, issued by these authorities, and by a translation. No other formalities shall be required for the declaration of priority at the time when the application is filed. Each of the contracting countries shall

determine the consequences following the omission of the formalities, prescribed by this article, but such consequences may not exceed the loss of the right of priority.

(E) Later on other proofs may be required.

ART. 4 *bis*. Patents applied for in the different contracting countries by persons admitted to the benefits of the Convention in terms of Articles 2 and 3 shall be independent of patents obtained for the same invention in other countries, whether or not they are adherents of the Union.

This provision must be understood absolutely, especially in the sense that the patents applied for during the term of priority are independent, with regard to nullity and forfeiture proceedings as well as with regard to their natural duration.

It shall apply to all patents in existence at the date when it comes in force.

It shall also apply in the case of the accession of new countries, to patents in existence on either side at the moment of accession.

ART. 5. The introduction by the patentee into the country where the patent has been issued of objects manufactured in any of the countries of the Union shall not entail forfeiture.

Nevertheless, the patentee shall remain subject to the obligation to work his patent in conformity with the law of the country into which he introduces the patented objects, but with the restriction that annulment shall be pronounced against a patent in any country by reason of non-working only after a lapse of three years dating from the application in the said country and only in case the patentee cannot justify the causes of his inaction.

ART. 6. Every mark of manufacture or commerce duly registered in the country of origin shall be admitted to registration and protected such as it is in the other countries of the Union.

However, the following may be rejected or cancelled:

(1) Marks which are of such nature that they infringe the rights of others, acquired in the country where protection is demanded.

(2) Marks, devoid of all distinctive character or composed exclusively of signs or indications, which serve, in the trade, to distinguish the species, quality, quantity, destination, value, place of origin of the products or the epoch of production, or having become common in current language or old and constant customs in the commerce of the country where protection is demanded.

In the valuation of the distinctive character of a mark, account must be taken of all existing circumstances, especially of the duration of the mark.

(3) Marks that are contrary to good morals or public order. As the country of origin shall be considered the country in which the applicant has his principal establishment.

If this principal establishment is not situated in one of the

countries of the Union, the country to which the applicant belongs shall be deemed to be the country of origin.

The nature of the goods on which the mark of manufacture or commerce is to be used, can in no case be an obstacle to the registration of the mark.

The contracting countries agree to admit to registration and to protect the marks belonging to associations, the existence of which is not contrary to the law of the country of origin, even when such associations do not possess an industrial or commercial establishment.

However, each country shall be the judge of the particular conditions under which an association shall be admitted to a protection of its marks. (Art. 7.)

A commercial name shall be protected in all the countries of the Union, without the necessity of registration, whether or not it forms part of a trade or commercial mark. (Art. 8.)

All goods bearing illegally a mark of manufacture or commerce or a commercial name shall be seized on importation into those countries of the Union where this mark or trade name has a right to legal protection.

When the law of a country does not permit seizure on importation, the seizure shall be replaced by the prohibition of importation.

The seizure shall be effected in the country where the illegal apposition shall take place as well as in the country into which the product is imported.

The seizure shall be effected at the request of either the public prosecutor or of the interested party, in conformity with the domestic legislation of each country.

The authorities are not bound to effect the seizure in case of transit.

If the law of a country permits neither the seizure on importation, nor the prohibition of importation, nor the seizure in the interior, these measures are replaced by the actions and remedies which the law of that country shall grant in similar cases to natives. (Art. 9.)

The provisions of the preceding article shall apply to all goods falsely bearing the name of any locality as indication of their place of origin, when such indication is associated with a trade name, either fictitious or assumed, with fraudulent intent.

Any producer, manufacturer or merchant, engaged in the production, manufacture or sale of such product and established either in the locality falsely designated as the place of origin, or in the region where such locality is situated, shall be deemed an interested party.

All the contracting countries agree to assure to the adherents of the Union an effective protection against unfair competition. (Art. 10.)

The contracting countries shall grant, in conformity with their interior laws, a temporary protection to marks of manufacture or commerce, for articles exhibited at international exhibitions, either official or officially recognized, organized on the territory of same. (Art. 11.)

Each of the contracting countries agrees to establish a special department for Industrial Property and a central office for the communication to the public of marks of manufacture or commerce.

This office shall publish as far as possible an official periodical paper. (Art. 12.)

The International Office organized at Berne under the name of the "Bureau International pour la Protection de la Propriété Industrielle" is placed under the High Authority of the Government of the Swiss Confederation which shall regulate its organization and supervise its work.

The International Office will centralize information of every kind relating to the Protection of Industrial Property and will collect it in the form of general statistics, which shall be distributed to all the Administrations. It will interest itself in all matters of common utility to the Union and will edit, with the help of the documents placed at its disposal by the various Administrations, a periodical paper in the French language on the questions regarding the object of the Union.

The numbers of this paper, as well as all the documents published by the International Bureau, shall be distributed among the Administrations of the countries of the Union in the proportion of the number of contributing units mentioned below. The additional copies and documents which may be desired either by said Administrations or by societies or private persons, shall be paid for separately.

The International Office shall at all times hold itself at the service of the members of the Union in order to supply them with any special information they may need on questions relating to the international service of Industrial Property. It shall furnish an annual Report upon its administration, which shall be communicated to all the members of the Union.

The expenses of the International Office shall be borne in common by all the contracting countries. They must not, in any event, exceed the sum of sixty thousand francs a year.

To determine the part to be contributed by each of the countries to said total amount of expenses, the contracting countries and those who may later on join the Union, shall be divided in

six classes, each contributing in the proportion of a certain number of units, namely:

1st class.....	25	units
2nd " .....	20	"
3rd " .....	15	"
4th " .....	10	"
5th " .....	5	"
6th " .....	3	"

These co-efficients shall be multiplied by the number of countries of each class, and the sum of the products thus obtained will furnish the number of units by which the total expense must be divided. The quotient will give the amount of the unit of expense.

Each of the contracting countries shall designate, at the time of joining, the class in which it desires to rank. The Government of the Swiss Confederation shall supervise the expenses of the International Office, advance the necessary funds and render an annual statement, which shall be communicated to all the other Administrations. (Art. 13.)

The present convention shall be submitted to periodical revisions with a view of introducing improvements calculated to perfect the system of the Union.

To this end Conferences shall be held successively in one of the contracting countries by Delegates of said countries.

The government of the country in which the conference is to be held, shall, with the assistance of the International Office, prepare the transactions of that conference.

The Director of the International Office shall be present at the sittings of the Conference and shall take part in the discussions, without the privilege of voting.

ART. 15. It is understood that the contracting countries respectively reserve to themselves the right to make separately, with each other, special arrangements for the Protection of Industrial Property, so long as such arrangements do not contravene the provisions of the present Convention.

ART. 16. The countries that have not taken part in the present Convention shall be permitted to adhere at their request.

Such adhesion shall be notified through the diplomatic channel to the Government of the Swiss Confederation, and by the latter to all others.

It shall entail complete accession to all the clauses and admission to all the advantages, stipulated by the present Convention, and shall take effect one month after the sending of the notification by the Government of the Swiss Confederation to the other countries of the Union, unless a later date is indicated by the adhering country.

ART. 16 *bis*. The contracting countries shall have the right to accede at any time to the present Convention for their Colonies, possessions, dependencies and protectorates or for some of them. To this effect, they can either make a general declaration, by which all their colonies, possessions, dependencies or protectorates take part in the accession, or they can name expressly those that are included or limit themselves to the indication of those that are excluded. This declaration is notified in writing to the Government of the Swiss Confederation and by the latter to all the other contracting countries. They shall have the right to denounce under the same conditions the Convention for their colonies, possessions, dependencies and protectorates or for some of them.

ART. 17. The execution of the reciprocal engagements contained in the present Convention is subordinated, in so far as necessary, to the observance of the formalities and rules established by the constitutional laws of those of the contracting countries who are bound to procure the application of the same, which they agree to do within as short a time as possible.

ART. 17. *bis*. The present convention shall remain in force for an unlimited time, till the expiration of one year from the day on which its denunciation is made.

Such denunciation shall be addressed to the Government of the Swiss Confederation. It shall only affect the country making the same, the Convention remaining effective with regard to the other contracting countries.

ART. 18. The present Act shall be ratified and the ratifications shall be deposited at Washington not later than April 1, 1913. It shall come into operation among the countries who have ratified the same, at the expiration of one month from that date.

This Act and its Final Protocol shall supersede in the relations of the countries who shall have ratified the same, the Convention of Paris of March 20, 1883, the Final Protocol, annexed to said Act, the Protocol of Madrid of April 15th, 1891, concerning the endowment of the International Office and the Additional Act of Brussels of December 14, 1910.

The above Acts will, however, remain in force in the relations of the countries who shall not ratify the present Act.

ART. 19. One signed copy of this Act shall be deposited in the Archives of the Government of the United States. A certified copy shall be sent by the latter to all the Governments of the Union.

Done at Washington in a single copy June 2, 1911.

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### FINAL PROTOCOL

Before the signing of the Act, concluded on this date, the undersigned Plenipotentiaries have agreed as follows:

AD. ART. 1.—The words “Industrial Property” shall be understood in the broadest sense; they shall apply to all products of the agricultural domain (wine, grain, fruit, animals, etc.) and extractives (minerals, mineral waters, etc.).

AD. ART. 2.—

(a) Under the name “patents of invention” are understood the various kinds of industrial patents, recognized by the laws of the contracting countries, such as patents of importations, patents of improvement, etc., for processes as well as for products.

(b) It is understood that the provision of Article 2, which absolves the adherents of the Union from the obligation of domicile and establishment, has a constructive character, and, in consequence, must apply to all rights created by virtue of the Convention of March 20, 1883, before the present Act is put in force.

(c) It is understood that the provisions of Article 2 do not affect the legislation of each of the contracting countries with regard to the procedure to be followed before the Tribunals and the competency of the Tribunals as well as the election of domicile or the appointment of a representative, required by the laws on patents, utility models, marks, etc.

AD. ART. 4.—It is understood that, when an industrial design or model shall be filed in a country under a right of priority, based upon the filing of a utility model, the term of priority shall be but that stipulated by Article 4 for industrial designs and models.

AD. ART. 6.—It is understood that the provision of the first paragraph of Article 6 does not exclude the right to demand from the applicant a regular certificate of registration in the country of origin, issued by the competent authority.

It is understood that the use of public coats-of-arms, badges or decorations, which have not been authorized by the competent authorities, or the use of official signs or stamps of control and guarantee, adopted by a Union country, may be considered as against public order, in the meaning of No. 3 of Art. 6.

However, marks which contain reproductions of public coats-of-arms, decorations or badges, with the consent of the competent authorities, shall not be considered as against public order.

It is understood that a mark shall not be considered as against public order for the sole reason that the same does not conform to any one provision of the law on marks, except when such provision itself deals with public order.

# INDEX

	PAGE		PAGE
Argentine Republic .....	7-29	Dominican Republic or Santo Domingo .....	169-172
Australian Commonwealth ..	29-45	Dutch East Indies .....	172-174
Austria .....	45-60	East Africa Protectorate.....	175
Bahama Islands .....	60-66	Ecuador .....	175-179
Barbados .....	66-68	Egypt .....	179-181
Belgium .....	68-78	Eritrea .....	181-184
Bermuda .....	78-83	Falkland Islands .....	184-185
Bolivia .....	83-87	False Indication of Origin.....	602-618
Brazil .....	87-93	Fiji Islands .....	185-186
British Guiana .....	93-94	Finland .....	186-188
British Honduras .....	94-96	First Applicant .....	599
British North Borneo.....	96-98	France .....	188-205,
Bulgaria .....	98-106	Gambia .....	206
Canada .....	106-115	Germany .....	207-225
Cape Province .....	115-121	Gibraltar .....	225-226
Central Africa Protec- torate .....	121-122	Gold Coast Colony .....	226-227
Ceylon .....	122-126	Great Britain .....	227-247
Channel Islands .....	126	Greece .....	247-251
Chile .....	126-129	Grenada .....	251-252
China .....	130-135	Guatemala .....	252-256
Colombia .....	135-137	Hawaii .....	256-257
Congo Free State .....	138-140	Honduras .....	257-259
Consular Courts .....	618-620	Hong Kong .....	259-266
Convention of American States .....	664-676	Hungary .....	266-274
Costa Rica .....	140-142	Iceland .....	274-275
Crete .....	142-145	India .....	275-278
Cuba .....	145-151	International Union .....	648-664
Curacao or Dutch West In- dies .....	152-153	See also .....	676-683
Cyprus .....	153-157	Italy .....	278-287
Danish West Indies .....	157-158	Jamaica .....	287-294
Denmark .....	158-169	Japan .....	294-312
		Leeward Islands .....	312-315
		Liberia .....	315-316



	PAGE		PAGE
Luxembourg .....	316-318	Rhodesia .....	437-441
Malta and Gozo .....	318-322	Roumania .....	441-448
Marking Trademarks .....	599-602	Russia .....	448-454
Mauritius .....	323-327	Salvador .....	454-460
Merchandise Marks Act .....	621-630	Servia .....	460-463
Mexico .....	327-341	Seychelles .....	463-464
Montenegro .....	341-342	Siam .....	464-465
Morocco .....	342	Southern Nigeria .....	465-468
Natal .....	342-345	Spain .....	468-485
Netherlands .....	345-355	St. Helena .....	485-486
Newfoundland .....	355-357	St. Lucia .....	486-487
New Zealand .....	358-373	St. Vincent .....	487-488
Nicaragua .....	373-379	Straits Settlements .....	488-489
Northern Nigeria .....	379-380	Sudan .....	489
Norway .....	380-388	Surinam .....	490-491
Oman .....	388-389	Sweden .....	491-495
Orange River Colony .....	389-391	Switzerland .....	496-506
Panama .....	391-397	Transvaal .....	506-511
Paraguay .....	397-400	Trinidad and Tobago .....	511-513
Peru .....	400-412	Tunis .....	513-516
Philippine Islands .....	412-419	Turkey .....	516-522
Porto Rico .....	419-422	Unfair Trade .....	630-648
Portugal .....	423-433	United States of America .....	522-562
Portuguese Colonies .....	433-437	Uruguay .....	563-578
Priority of Use .....	598-599	Venezuela .....	579-583
Red Cross .....	620-621	Zanzibar .....	583-584
Requirements .....	585-598		

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