

"The Penal Code."

Act of June 24, 1939, P. L. 872, amended by adding, immediately after section 326, a new section 327.

Picketing court house made unlawful.

Penalty.

Saving clause.

Act effective immediately.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act, approved the twenty-fourth day of June, one thousand nine hundred thirty-nine (Paraphlet Laws 872), entitled "An act to consolidate, amend and revise the penal laws of the Commonwealth," is hereby amended by adding, immediately after section three hundred twenty-six, a new section to read as follows:

Section 327. Whoever, with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness or court officer in the discharge of his duty, pickets or parades in or near any building housing a court of the Commonwealth of Pennsylvania, or in or near a building or residence occupied or used by such judge, juror, witness or court officer, or with such intent uses any sound-truck or similar device, or resorts to any other demonstration in or near any such building or residence, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five thousand dollars (\$5000), or to undergo imprisonment not exceeding one (1) year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the Commonwealth of Pennsylvania of its power to punish for contempt.

Section 2. The provisions of this act shall become effective immediately upon final enactment.

APPROVED—The 26th day of September, A. D. 1951.

JOHN S. FINE

No. 381

AN ACT

To provide for the registration and protection of trade-marks and to secure the rights, property and interests therein; providing for the assignment, cancellation and revocation thereof, and imposing penalties for violations; conferring powers and imposing duties upon the Secretary of the Commonwealth in the administration thereof; and to repeal all acts inconsistent therewith.

Trademarks.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Definitions.

(a) The term "trade-mark" as used herein means any word, name, symbol or device, or any combination thereof, adopted and used by a person to identify goods produced, manufactured or sold by him, and to distinguish them from goods produced, manufactured or sold by others.

(b) The term "person" as used herein means any individual, firm, co-partnership, corporation, association, or other organization.

(c) The term "applicant" as used herein means any person filing an application for registration of a trade-mark under this act, or his legal representatives, successors or assigns.

(d) The term "registrant" as used herein means any person heretofore registering a trade-mark under this act, or his legal representatives, successors or assigns.

(e) For the purposes of this act, a trade-mark shall be deemed to be "adopted and used" in this Commonwealth when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto, and such goods are sold or otherwise distributed in this Commonwealth.

Section 2. Registrability.

A trade-mark by which the goods of any applicant for registration may be distinguished from the goods of others shall not be registered which:

(a) consists of or comprises immoral, deceptive, or scandalous matter; or

(b) consists of or comprises the flag or coat of arms or other insignia of the United States, the Commonwealth of Pennsylvania, or of any other state or municipality, or of any foreign nation, or any simulation thereof; or

(c) consists of or comprises the name, signature, or portrait of any living individual, except with his written consent; or

(d) consists merely of the name of any individual, co-partnership, corporation, or association, unless such name be written, printed, impressed, or woven in some particular or distinctive manner; or

(e) consists of or comprises any trade-mark which,
1. when applied to the goods of the applicant is merely descriptive or deceptively misdescriptive of them; or

2. when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

(f) consists of or comprises a trade-mark which so resembles any trade-mark registered in this Commonwealth and not abandoned as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive the public concerning the origin or manufacture of such goods, unless it shall be proved to the satisfaction of the Secretary of the Commonwealth that the person, co-partnership or corporation last applying for the registry of such trade-mark is entitled thereto and the owner thereof by right of prior adoption and use, in which case the date of the adoption shall determine the ownership, and shall be proved by affidavits of

persons conversant with such dates. In case the Secretary of the Commonwealth becomes satisfied after a hearing held, in his discretion, that the person, co-partnership or corporation last applying for registry is entitled by priority of adoption and use in the Commonwealth of Pennsylvania to register such trade-mark, he shall revoke the first registry thereof and, upon application and the payment of the fee, register the same in the name of said applicant.

Section 3. Powers of the Secretary of the Commonwealth.

The Secretary of the Commonwealth is authorized to promulgate rules and regulations and prescribe forms for the filing of trade-marks under the provisions of this act, and to have the power and authority reasonably necessary to enable him to administer this act efficiently and to perform the duties imposed upon him by its provisions.

Section 4. Application for Registration.

Subject to the limitations set forth in this act, any person who has adopted and used a trade-mark in this Commonwealth may file in the office of the Secretary of the Commonwealth, on a form to be furnished by the Secretary of the Commonwealth, an application for registration of that trade-mark, setting forth under oath the following information:

1. The name of the person, co-partnership or corporation applying for such registration, his or its residence, location or place of business, and, if a corporation, the state of incorporation;

2. The general class of merchandise with which the mark is used and the particular articles comprised therein to which it has been appropriated and used;

3. The date when the trade-mark was first used anywhere and the date when it was first used in this State by the applicant or his predecessor in title;

4. A statement that the applicant is the owner of the trade-mark and that no other person has the right to use such trade-mark in this State, either in the identical form thereof or in any such near resemblance thereto as might be calculated to deceive or to be mistaken *therefor. The application shall be signed and sworn to by any officer of the corporation or association or by a member of the co-partnership applying. The application shall be accompanied with two specimens or facsimiles of such trade-mark, and check or money order for the filing fee of \$15.00, payable to the Secretary of the Commonwealth.

Section 5. Certificate of Registration.

Upon compliance by the applicant with the requirements of this act, the Secretary of the Commonwealth

* "therefore" in original.

shall cause a certificate of registration to be issued and delivered to him. The certificate of registration shall be issued under the signature of the Secretary of the Commonwealth and the seal of the State, and shall set forth the name and address of the applicant, the name or description of the trade-mark and the general class of goods to which appropriated, and the date on which the application was filed.

Any certificate of registration issued by the Secretary of the Commonwealth under the provisions hereof, or a copy thereof duly certified by him, shall be admissible in evidence as competent and sufficient proof of the registration of such trade-mark in any action or judicial proceedings in any court of this Commonwealth.

Section 6. Duration and Renewal.

Registration of a trade-mark hereunder shall be effective for a term of ten years from the date of registration, and upon application filed within six months prior to the expiration of such term, on a form to be furnished by the Secretary of the Commonwealth, the registration may be renewed for a like term. A renewal fee of \$15.00, payable to the Secretary of the Commonwealth, shall accompany the application for renewal of the registration.

A trade-mark registration may be renewed for successive periods of ten years in like manner.

Any registration in force on the date on which this act shall become effective shall expire ten years from the date of the registration or of the last renewal thereof or five years after the effective date of this act, whichever is later, and may be renewed by filing an application with the Secretary of the Commonwealth, on a form furnished by him, and paying the aforementioned renewal fee thereof within six months prior to the expiration of the registration.

Section 7. Assignment.

Any trade-mark and its registration hereunder shall be assignable with the good will of the business in which the trade-mark is used, or with that part of the good will of the business connected with the use of and symbolized by the trade-mark. Assignment shall be by instrument in writing, duly executed, and may be recorded with the Secretary of the Commonwealth, upon the payment of a fee of \$10.00 payable to the Secretary of the Commonwealth, who, upon recording of the assignment, shall issue, in the name of the assignee, a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this act shall be void as against any subsequent purchaser for valuable consideration and without notice, unless it is recorded with the Secre-

tary of the Commonwealth within three months after the date or prior to such subsequent purchase.

Section 8. Records.

The Secretary of the Commonwealth shall keep for public examination a record of all trade-marks registered or renewed under this act.

Section 9. Cancellation.

The Secretary of the Commonwealth shall cancel from the register:

(1) After five years from the effective date of this act, all registrations under prior acts which are more than ten years old and not renewed in accordance with this act.

(2) Any registration concerning which the Secretary of the Commonwealth shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record.

(3) All registrations granted under this act and not renewed in accordance with the provisions hereof.

(4) Any registration concerning which a court of competent jurisdiction shall find:

(a) That the registered trade-mark has been abandoned.

(b) That the registrant is not the owner of the trade-mark.

(c) That the registration was granted improperly.

(d) That the registration was obtained fraudulently.

(e) That the registered trade-mark is so similar as to be likely to cause confusion or mistake or to deceive, or that it is similar to a trade-mark registered by another person in the United States Patent Office prior to the date of the filing of the application for registration by the registrant hereunder and not abandoned: Provided, however, That should the registrant prove that he is the owner of a concurrent registration of his trade-mark in the United States Patent Office, covering an area including this State, the registration hereunder shall not be canceled.

(5) When a court of competent jurisdiction shall order cancellation of a registration on any ground.

(6) Any registration in the following circumstances:

(a) Where an applicant, by affidavits and other good and sufficient evidence, shall prove to the satisfaction of the secretary that he is entitled to any trade-mark heretofore registered in this office by virtue of prior adoption and use.

(b) In the case of a corporation having filed articles of dissolution or a decree of dissolution, any person may, at any time at least three years thereafter, present a petition under proper affidavit to the Secretary of the Commonwealth setting forth such fact.

(c) In the case of a person, co-partnership or corporation not having filed articles of dissolution or a decree of dissolution, but having discontinued or gone out of the business to which such registration is pertinent.

(d) When a registered trade-mark has been abandoned or discontinued for a period of at least five years subsequent to registration and such abandonment and non-user still persists.

In all circumstances enumerated in section (6), subsections (a) to (d) inclusive, any person may present his petition for cancellation, in writing and supported by proper affidavit, to the Secretary of the Commonwealth, accompanied with a fee of \$25.00.

The petition shall set forth the pertinent facts relative thereto, and shall contain proof of service of notice of such petition on the person, co-partnership or corporation in whose name the said registration is recorded, and asking that such registration be cancelled. The secretary shall fix a time to hear the parties concerned in the matter, and shall send, by registered mail, a notice thereof to the person, co-partnership or corporation in whose name such registration is recorded. If, after hearing, the secretary is satisfied of the truth of the facts alleged in the petition in accordance with the provisions of this section, he shall cancel the said registration.

Section 10. Classification.

The following general classes of goods are established for the purpose of administering this act. The Secretary of the Commonwealth is authorized, in his discretion, to amend, by rule or regulation, the classification herein-after established, but not in any way to limit or extend the applicants or registrants rights. An application for registration of a trade-mark shall be limited to a single general class of merchandise: Provided, however, That nothing in this act shall be construed as limiting the registration of a trade-mark to one general class.

The said classes are as follows:

1. Raw or partly prepared materials.
2. Receptacles.
3. Baggage, animal, equipments, portfolios and pocketbooks.
4. Abrasives and polishing materials.
5. Adhesives.
6. Chemicals and chemical compositions.
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.
18. Medicines and pharmaceutical preparations.
19. Vehicles.
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.
35. Belting, hose, machinery, packing and nonmetallic 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, and substitutes therefor.
43. Thread and yarn.
44. Dental, medical and surgical appliances.
45. Soft drinks and carbonated waters.
46. Foods and ingredients of foods.
47. Wines.
48. Malt beverages and liquors.
49. Distilled alcoholic liquors.
50. Merchandise not otherwise classified.
51. Cosmetics and toilet preparations.
52. Detergents and soaps.

Section 11. (a) Fraudulent Registration.

Any person who shall, for himself or on behalf of any other person, procure the filing or registration of any trade-mark in the office of the Secretary of the Commonwealth under the provisions hereof by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means,

shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

(b) Disclaimer.

The Secretary of the Commonwealth shall require unregistrable matter to be disclaimed, but such disclaimer shall not prejudice or affect the applicant's common law rights then existing or thereafter arising in such disclaimed matter.

Section 12. Infringement.

Subject to the provisions of section 14 hereof, any person who shall:

(a) Use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a trade-mark registered under this act in connection with the sale, offering for sale, or advertising of any goods on or in connection with such use, as likely to cause confusion or mistake or to deceive as to the source of origin of such goods; or

(b) Reproduce, counterfeit, copy or colorably imitate any such trade-mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements, intended to be used upon or in connection with the sale or other distribution in this State of such goods, shall be subject to a penalty of \$100, to be sued for in any court having jurisdiction of an action, by fine or penalty, by a person, co-partnership or corporation aggrieved thereby, and, in addition to the penalty provided for in this section, may award to the plaintiff such damages resulting from such wrongful and unlawful acts as may be proved, and shall require the defendant to pay to the plaintiff the profits derived by such unlawful acts.

The provisions of this section shall not apply to any advertising agency, publisher of newspapers, magazines, or other advertising media accepting authorization for the reproduction or copy of any such trade-mark innocently and in good faith in the usual course of business.

Section 13. Remedies.

Any owner of a trade-mark registered under this act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages

suffered by reason of such wrongful manufacture, use, display or sale, and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court or to the complainant, to be destroyed; but no owner of such a trade-mark shall have such right of injunction against an advertising agency, publisher of newspapers, magazines, or other advertising media accepting authorization for the reproduction or copy of any such trade-mark innocently and in good faith in the usual course of business.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this State.

Section 14. Common Law Rights.

Nothing herein shall adversely affect the rights or the enforcement of rights in trade-marks acquired in good faith at any time at common law.

Section 15. Severability.

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

Section 16. Time of Taking Effect.

This act shall be in force and take effect immediately after enactment, but shall not affect any suit, proceeding or appeal then pending.

Section 17. Repeal of Prior Acts.

The act, approved the twentieth day of June, one thousand nine hundred one (Pamphlet Laws 582), entitled "An act to provide for the registration of labels, trade-marks, trade-names, stamps, designs, devices, shop-marks, terms, brands, designations, descriptions, or forms of advertisement, and protect and secure the rights, property and interest therein of the persons, copartnerships or corporations adopting and filing the same, and providing penalties for the violations of the act," and its amendments, are hereby repealed.

All other acts relating to trade-marks and parts of any other acts inconsistent herewith are hereby repealed on the effective date of this act: Provided, That as to any suit, proceeding or appeal pending at the time this act shall take effect, such repeal shall not be deemed to be effective until final determination of said pending suit, proceeding or appeal.

APPROVED—The 26th day of September, A. D. 1951.

JOHN S. FINE