

Calendar No. 1213

98TH CONGRESS
2D SESSION**S. 1990**

[Report No. 98-627]

To clarify the circumstances under which a trademark may be canceled or abandoned.

 IN THE SENATE OF THE UNITED STATES

OCTOBER 21 (legislative day, OCTOBER 17), 1983

Mr. HATCH (for himself, Mr. LEAHY, Mr. THURMOND, Mr. LAXALT, Mr. DOLE, Mr. SIMPSON, Mr. GRASSLEY, Mr. EAST, Mr. DECONCINI, Mr. BAUCUS, Mr. HEFLIN, Mr. MCCLURE, Mr. HELMS, Mr. DENTON, Mr. KENNEDY, and Mr. WILSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

September 20 (legislative day, SEPTEMBER 17), 1984

Reported by Mr. THURMOND, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To clarify the circumstances under which a trademark may be canceled or abandoned.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 ~~That this Act may be cited as the "Trade-Mark Clarification~~
- 4 ~~Act of 1983".~~

1 SEC. 2. Section 14(e) of the Lanham Trade-Mark Act
2 (15 U.S.C. 1064(e)) is amended by adding before the semi-
3 colon at the end of such section the following: “, except that
4 a registered mark shall not be deemed to be the common
5 descriptive name of goods or services merely because such
6 mark is also used as a proper name of or to identify a unique
7 product or service. The primary significance of the registered
8 mark to the purchasing public rather than purchaser motiva-
9 tion shall be the test for determining whether the registered
10 mark has become the common descriptive name of goods or
11 services in connection with which it has been used”.

12 SEC. 3. Section 45 of the Lanham Trade-Mark Act (15
13 U.S.C. 1127) is amended as follows:

14 (a) Strike out “The term ‘trade-mark’ includes any
15 word, name, symbol, or device or any combination thereof
16 adopted and used by a manufacturer or merchant to identify
17 his goods and distinguish them from those manufactured or
18 sold by others.” and insert in lieu thereof the following: “The
19 term ‘trade-mark’ includes any word, name, symbol, or
20 device or any combination thereof adopted and used by a
21 manufacturer or merchant to identify and distinguish his
22 goods, including a unique product, from those manufactured
23 or sold by others and to indicate the source of the goods,
24 albeit anonymous.”.

1 (b) Strike out "The term 'service mark' means a mark
2 used in the sale or advertising of services to identify the serv-
3 ices of one person and distinguish them from the services of
4 others." and insert in lieu thereof the following: "The term
5 'service mark' means a mark used in the sale or advertising
6 of services to identify and distinguish the services of one
7 person, including a unique service, from the services of
8 others and to indicate the source of the services, albeit
9 anonymous."

10 (c) Add at the end of subparagraph (b) in the definition
11 of "Abandonment of mark" the following new sentence:
12 "The primary significance of the mark to the purchasing
13 public rather than purchaser motivation shall be the test for
14 determining abandonment under this subparagraph."

15 *That this Act may be cited as the "Trademark Clarification*
16 *Act of 1983".*

17 *SEC. 2. Section 14(c) of the Trademark Act of 1946,*
18 *commonly known as the Lanham Trademark Act (15 U.S.C.*
19 *1064(c)) is amended by adding before the semicolon at the*
20 *end of such section a period and the following: "A registered*
21 *mark shall not be deemed to be the common descriptive name*
22 *of goods or services solely because such mark is also used as*
23 *a name of or to identify a unique product or service. The*
24 *primary significance of the registered mark to the relevant*
25 *public rather than purchaser motivation shall be the test for*

1 *determining whether the registered mark has become the*
2 *common descriptive name of goods or services in connection*
3 *with which it has been used”.*

4 *SEC. 3. Section 45 of such Act (15 U.S.C. 1127) is*
5 *amended as follows:*

6 *(1) Strike out “The term ‘trade-mark’ includes*
7 *any word, name, symbol, or device or any combination*
8 *thereof adopted and used by a manufacturer or mer-*
9 *chant to identify his goods and distinguish them from*
10 *those manufactured or sold by others.” and insert in*
11 *lieu thereof the following: “The term ‘trademark’ in-*
12 *cludes any word, name, symbol, or device or any com-*
13 *bination thereof adopted and used by a manufacturer*
14 *or merchant to identify and distinguish his goods, in-*
15 *cluding a unique product, from those manufactured or*
16 *sold by others and to indicate the source of the goods,*
17 *even if that source is unknown.”.*

18 *(2) Strike out “The term ‘service mark’ means a mark*
19 *used in the sale or advertising of services to identify the serv-*
20 *ices of one person and distinguish them from the services of*
21 *others.” and insert in lieu thereof the following: “The term*
22 *‘service mark’ means a mark used in the sale or advertising*
23 *of services to identify and distinguish the services of one*
24 *person, including a unique service, from the services of*

1 *others and to indicate the source of the services, even if*
2 *that source is unknown.”.*

3 (3) *Add at the end of subparagraph (b) in the*
4 *paragraph which begins “A mark shall be deemed to be*
5 *‘abandoned’ “, the following new sentence: “Purchaser*
6 *motivation shall not be a test for determining abandon-*
7 *ment under this subparagraph.”.*