

deceased employee. Any employer making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and he shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

Section 2. The provisions of this act shall become effective immediately. Act effective immediately.

APPROVED—The 29th day of May, A. D. 1956.

GEORGE M. LEADER

No. 617

AN ACT

Reenacting and amending the act of September twenty-six, one thousand nine hundred fifty-one (Pamphlet Laws 1518), entitled "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," extending the act to service-marks used to identify certain services and distinguish them from others.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows: Trade-marks.

Section 1. The title and the act of September twenty-six, one thousand nine hundred fifty-one (Pamphlet Laws 1518), entitled "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," are reenacted and amended to read:

The title and act of September 26, 1951, P. L. 1518, reenacted and amended.

AN ACT

To provide for the registration and protection of trade-marks and service-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.

The Title.

## 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.

*(a.1) The term "service-mark" as used herein means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes, without limitation, the marks, names, symbols, titles, designations, slogans, character names and distinctive features of radio or other advertising used in commerce.*

(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 or service-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 or service-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.

*(f) For the purposes of this act, a service-mark shall be deemed to be "adopted and used" in this Commonwealth when it is used to identify the services of one person and distinguish them from the services of others, and such services are sold or otherwise rendered in this Commonwealth.*

## Section 2. Registrability.

A trade-mark or service-mark by which the goods or services of any applicant for registration may be distinguished from the goods or services 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

\* "consists" in original.

(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, copartnership, 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 *or service-mark* which,

1. when applied to the goods *or services* of the applicant is merely descriptive or deceptively misdescriptive of them; or

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

(f) consists of or comprises a trade-mark *or service-mark* which so resembles any trade-mark *or service-mark* registered in this Commonwealth and not abandoned as to be likely, when applied to the goods *or services* of the applicant, to cause confusion or mistake or to deceive the public concerning the origin or manufacture of such goods *or services*, 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 *or service-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, copartnership or corporation last applying for registry is entitled by priority of adoption and use in the Commonwealth of Pennsylvania to register such trade-mark *or service-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 *and service-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 or *service-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 or *service-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 or *services* with which the mark is used and the particular articles or *services* comprised therein to which it has been appropriated and used;

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

4. A statement that the applicant is the owner of the trade-mark or *service-mark* and that no other person has the right to use such trade-mark or *service-mark* in this [State] *Commonwealth*, 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 facsimilies of such trade-mark or *service-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 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] *Commonwealth*, and shall set forth the name and address of the applicant, the name or description of the trade-mark or *service-mark* and the general class of goods or *services* 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 *or service-mark* in any action or judicial proceedings in any court of this Commonwealth.

#### Section 6. Duration and Renewal.

Registration of a trade-mark *or service-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 *or service-mark* registration may be renewed for successive periods of ten years in like manner.

Any registration *of a trade-mark* in force on [the date on which this act shall become effective] *September 26, 1951*, shall expire ten years from the date of the registration or of the last renewal thereof \**or on September 26, 1956*, [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 *or service-mark* and its registration hereunder shall be assignable with the good will of the business in which the trade-mark *or service-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 *or service-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 Secretary of the Commonwealth [within] *not later than* three months after the date *of the assignment* or prior to such subsequent purchase.

#### Section 8. Records.

\* "on" in original.

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

#### Section 9. Cancellation.

The Secretary of the Commonwealth shall cancel from the register:

(1) [After] *In the case of trade-marks on and after September 26, 1956, and in the case of service-marks after [five] ten years* from the effective date of this *reenacting and amending* act, all registrations under *this or 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 *or service-mark* has been abandoned.

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

(c) That the registration was granted improperly.

(d) That the registration was obtained fraudulently.

(e) That the registered trade-mark *or service-mark* is so similar to a trade-mark *or service-mark* registered under *this act* as to be likely to cause confusion or mistake or to deceive, or that it is similar to a trade-mark *or service-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 *or service-mark* in the United States Patent Office, covering an area including this [State] *Commonwealth*, 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 *or service-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 *or service-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] *subsection* (6), [subsections] *clauses* (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 *and services* 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 hereinafter established, but not in any way to limit or extend the applicant's or registrant's rights. An application for registration of a trade-mark *or service-mark* shall be limited to a single general class of merchandise *or service*: Provided, [however,] That nothing in this act shall be construed as limiting the registration of a trade-mark *or service-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 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, 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.

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\* "porecelain" in original.



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.
100. *Miscellaneous services.*
101. *Advertising and business.*
102. *Insurance and financial.*
103. *Nonprofit hospital plans and nonprofit medical, dental and osteopathic service plans.*
104. *Construction and repair.*
105. *Communication.*
106. *Transportation and storage.*
107. *Material treatment.*
108. *Education and entertainment.*

#### 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 *or service-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 *or service-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] *or services in a manner likely to cause confusion or mistake or to deceive purchasers as to the source of origin of such goods or services; or*

(b) Reproduce, counterfeit, copy or colorably imitate any such trade-mark *or service-mark* and apply such reproduction, counterfeit, copy or colorable imi-

tation 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] *Commonwealth* of such goods or services, 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 or service-mark innocently and in good faith in the usual course of business.

#### Section 13. Remedies.

Any owner of a trade-mark or service-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] and 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 or service-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 or service-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] *Commonwealth*.

#### Section 14. Common Law Rights.

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

\* "receptables" in original.

## 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 29th day of May, A. D. 1956.

GEORGE M. LEADER

No. 618

## AN ACT

Authorizing the Department of Property and Supplies to sell and convey 57.8 acres, more or less, of land situate in Hanover Township, Beaver County, Pennsylvania, with the approval of the Governor.

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

Section 1. The Department of Property and Supplies, with the approval of the Governor, is hereby authorized on behalf of the Commonwealth of Pennsylvania to sell, at public sale to the highest bidder, the following described tract of land situate in the Township of Hanover, County of Beaver and Commonwealth of Pennsylvania, bounded and described as follows:

Beginning at a fallen dead oak replaced by a concrete monument in the east line of lands of the Commonwealth

Real Property.

Department of Property and Supplies, with the approval of the Governor, authorized to sell, at public sale, certain land in Hanover Township, Beaver County.

Description.