

AN ACT TO AMEND SECTIONS FOUR AND THIRTY-SEVEN OF, AND TO ADD NEW SECTIONS TWO-A, NINE-A, TEN-A, NINETEEN-A, AND TWENTY-ONE-A, AND NEW CHAPTERS II-A- THE PRINCIPAL REGISTER, AND...

REPUBLIC ACT NO. 638, June 11, 1951

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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. A new section is hereby added to Republic Act Numbered One hundred and sixty-six, immediately after section two thereof, to read as follows:

"SEC. 2-A. Ownership of trademarks, trade-names and service-marks; how acquired.-Anyone who lawfully produces or deals in merchandise of any kind or who engages in any lawful business, or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trade-mark, a trade-name, or a service-mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or services of others. The ownership or possession of a trade-mark, trade-name, service-mark, heretofore or hereafter appropriated, as in this section provided, shall be recognized and protected in the same manner and to the same extent as are other property rights known to the law".

SEC. 2. The following is hereby inserted between section three and section four of Republic Act Numbered One hundred and sixty-six:

"CHAPTER II-A.-The principal register"

SEC. 3. Section four, of Republic Act Numbered One hundred and sixty-six is hereby amended to read as follows:

"SEC. 4, Registration of trade-marks, trade-names and service-marks on the principal register.-There is hereby established a register of trade-marks, trade-names and service-marks which shall be known as the principal register. The owner of a trade-mark, trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same on the principal register, unless it:

"(a) Consists of or comprises immoral, deceptive or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

"(b) Consists of or comprises the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;

"(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by the written consent of the widow;

"(d) Consists of or comprises a mark or trade-name which so resembles a mark or trade-name registered in the Philippines or a mark or trade-name previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause

confusion or mistake or to deceive purchasers; or

"(e) Consists of a mark or trade-name which, when applied to or used in connection with the goods, business or services of the applicant is merely descriptive or deceptively misdescriptive of them, or when applied to or used in connection with the goods, business or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or is primarily merely a surname;

"(f) Except as expressly excluded in paragraphs (a), (b), (c) and (d) of this section, nothing herein shall prevent the registration of a mark or trade-name used by the applicant which has become distinctive of the applicant's goods, business or services. The Director may accept as prima facie evidence that the mark or trade-name has become distinctive, as applied to or used in connection with the applicants's goods, business or services, proof of substantially exclusive and continuous use thereof as a mark or trade-name by the applicant in connection with the sale of goods, business or services for the five years next preceding the date of the filing of the application for its registration."

SEC. 4. A new section is hereby added to Republic Act Numbered One hundred and sixty-six, immediately after section nine thereof, to read as follows:

"SEC. 9-A. Equitable principles to govern proceedings.- In opposition proceedings and in all other inter parties proceedings in the patent office under this act, equitable principles of laches, estoppel, and acquiescence, where applicable, may be considered and applied".

SEC. 5. The following new section is hereby added to Republic Act Numbered One hundred and sixty-six, immediately after section ten thereof:

"SEC. 10-A. Interference.-An interference is a proceeding instituted for the purpose of determining the question of priority of adoption and use of a trade-mark, trade-name, or service-mark between two or more parties claiming ownership of the same or substantially similar trademark, trade-name, or service-mark.

"Whenever application is made for the registration of a trade-mark, trade-name, or service-mark which so resembles a mark or trade-name previously registered by another, or for the registration of which another had previously made application, as to be likely when applied to the goods or when used in connection with the business or services of the applicant to cause confusion or mistake or to deceive purchasers, the director may declare that an interference exists.

"Upon the declaration of interference the director shall give notice to all parties and shall set the case for hearing to determine and decide the respective rights of registration.

"In an interference proceeding the director may refuse to register any or all of several interfering marks or trade-names, or may register the mark or marks or trade-name or trade-names for the person or persons entitled thereto, as the rights of the parties may be established in the proceedings."

SEC. 6. The following are hereby added to Republic Act Numbered One hundred and sixty-six, immediately after section nineteen thereof:

"CHAPTER IV-A.-The supplemental register

"SEC. 19-A. In addition to the principal register, the director shall keep another register to be called the supplemental register. All marks and trade-names capable of distinguishing applicant's goods or services and not registrable on the principal register herein provided, except those declared to be unregistrable under paragraphs (a), (b), (c), and (d) of section four of this Act, which have been in lawful use in commerce by the proprietor thereof, upon or in connection with any goods, business or services for the year preceding the filing of the application, may be registered on the supplemental register upon payment of a filing fee of eighty pesos for each application for one class, plus twenty pesos for each additional class, and compliance with the provisions of section five of this Act so far as they are applicable.

"Upon the filing of an application for registration on the supplemental register and payment of the fee herein provided the director shall cause an examination of the application to be made and, if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of the last paragraph of section seven of this act shall apply.

"For the purposes of registration on the supplemental register, a mark or a trade-name may consist of any trademark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, or device or any combination of any of the foregoing, but such mark or trade-name must be capable of distinguishing the applicant's goods, business, or services.

"Upon a proper showing by the applicant that he has begun the lawful use of his mark or trade-name in foreign commerce and that he requires domestic registration as a basis for foreign protection of his mark or trade-name, the director may waive the requirement of a full year's use and may grant registration forthwith.

"Marks and trade-names for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette. Whenever any person believes that he is or will be damaged by the registration of a mark or trade-name on this register, he may at any time apply to the director to cancel such registration. Upon receiving the application, the director shall give notice thereof to the registrant. If it is found after a hearing that the registrant was not entitled to register the mark at the time of his application for registration thereof, or that the mark was not used by the registrant or has been abandoned, the registration shall be cancelled by the director.

"The certificates of registration for marks and trade-names registered on the supplemental register shall be conspicuously different from certificates issued for marks and trade-names registered on the principal register.

"Except as hereinabove provided, and except sections ten-A, seventeen, eighteen, nineteen, twenty and thirty-five, the provisions of this act shall govern, so far as applicable, applications for registration and registrations on the supplemental register."

SEC. 7. A new section is hereby added to Republic Act Numbered One hundred and sixty-six, just below section twenty-one thereof, to read as follows:

"SEC. 21-A. Any foreign corporation or juristic person to which a mark or trade-name has been registered or assigned under this act may bring an action hereinunder for infringement, for, unfair competition, or false designation of origin and false description, whether or not it has been licensed to do business in the Philippines, under Act Numbered Fourteen hundred and fifty-nine, as amended, otherwise known as the Corporation Law, at the time it brings complaint: Provided, That the country of which the said foreign corporation or juristic person is a citizen, or in which it is domiciled, by treaty, convention or law, grants a similar privilege to corporate or juristic persons of the Philippines."

SEC. 8. Section thirty-seven of Republic Act Numbered One hundred and sixty-six, is hereby amended by adding the following new paragraph thereto, immediately after paragraph (d) thereof:

"(e) A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible, otherwise on the supplemental register herein provided. The application thereof shall be accompanied by a certified copy of the application for or registration in the country of origin of the applicant."

SEC. 9. This Act shall take effect upon its approval.

Approved, June 11, 1951.

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